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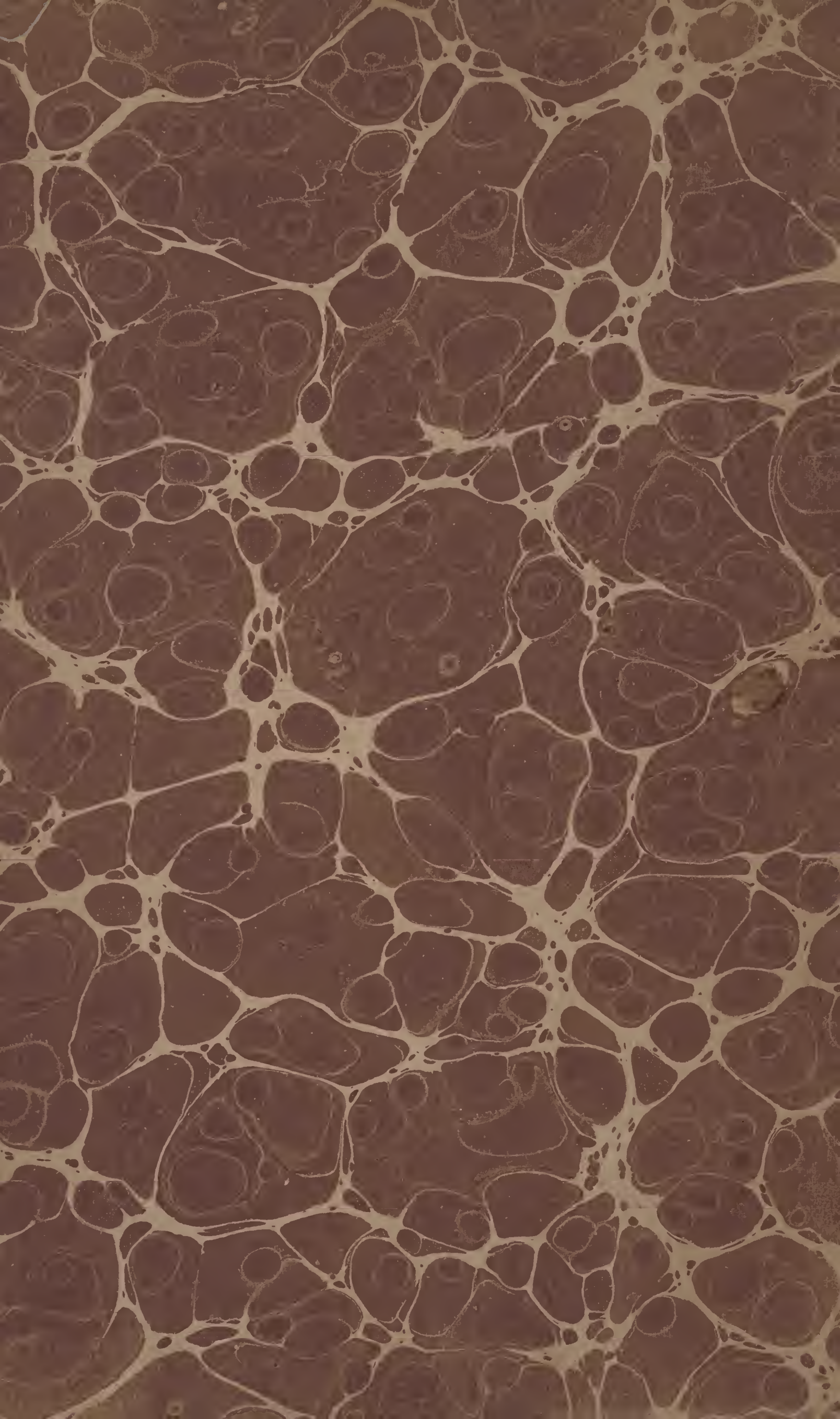
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CHARGES AGAINST RUFUS H. THAYER

HEARINGS

BEFORE THE

COMMITTEE ON EXPENDITURES IN THE
DEPARTMENT OF JUSTICE

U. S. Congress. HOUSE OF REPRESENTATIVES
SIXTY-THIRD CONGRESS

FIRST SESSION

ON

CHARGES OF HIGH CRIMES AND MISDEMEANORS MADE
AGAINST RUFUS H. THAYER, JUDGE OF THE
UNITED STATES COURT FOR CHINA
AT SHANGHAI, CHINA

INCLUDING EXHIBITS



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HEARINGS BEFORE THE COMMITTEE ON EXPENDITURES IN THE DEPARTMENT OF JUSTICE.

COMMITTEE ON EXPENDITURES
IN THE DEPARTMENT OF JUSTICE,
HOUSE OF REPRESENTATIVES,
Monday, September 15, 1913.

The committee this day met, Hon. Robert F. Broussard (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, this committee is without a clerk, but Mr. Curtis, who is an American citizen temporarily residing in Shanghai, China, where he practices law before the United States courts established there by our Government under treaty with the Government of China, has been here for a long time awaiting an opportunity to present a matter affecting the expenditures of that court, its method of handling business, and other matters pertinent to the jurisdiction of this committee. There being a majority of the committee present, if it is the desire of the committee we shall proceed with his examination, letting my secretary act, as he has heretofore done, as clerk of the committee.

Mr. FERGUSON. I move that we proceed as suggested by the chairman.

(The motion was agreed to.)

The CHAIRMAN. I think it may be proper to put in the record section 42 of the Rules of the House of Representatives to show under what jurisdiction the committee proceeds in this matter.

(Said rule follows:)

The examination of the accounts and expenditures of the several departments of the Government and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; the enforcement of the payment of moneys due to the United States; the economy and accountability of public officers; the abolishment of useless offices; the reduction or increase of the pay of officers shall all be subjects within the jurisdiction of the nine standing committees on public expenditures in the several departments, as follows:

* * * * *

STATEMENT OF MR. GEORGE F. CURTIS.

The CHAIRMAN. What is your occupation?

Mr. CURTIS. I am an attorney at law, practicing before the United States courts at Shanghai, and, by courtesy of the other nations, I practice before the international courts in Shanghai, before the British supreme court, and courts of the various nations, as well as before the consular courts.

The CHAIRMAN. How long have you been practicing before those courts?

Mr. CURTIS. I went out there in 1902. I was admitted to practice before the then United States Consular Court, which has since been superseded by the United States Court for China, and I have been practicing there continuously ever since, with the exception of a trip I made here in 1905 to lay before Congress certain charges of the grossest corruption against the then consul general and consular officers. Those charges are embodied in a report made during the Fifty-ninth Congress, first session, House Document No. 665, which report was printed upon resolution introduced by Hon. John Sharp Williams, of Mississippi, then a Member of the House, on the 8th of March, 1906. In response to that resolution President Roosevelt transmitted the report made by H. D. Peirce, Third Assistant Secretary of State, on his trip to the Orient on an inspection of the consulates in those countries. The result of those charges was that Mr. Goodnow resigned under the charges.

The CHAIRMAN. Who was he?

Mr. CURTIS. The consul general at Shanghai. And the consular officials under him resigned—they either resigned or were dismissed—and there was a reorganization of the consular service and the creation of a United States Court for China.

If I may be permitted to proceed, Mr. Chairman, I will state that this court exists in China by virtue of treaties with China and by virtue of the act of June 30, 1906, set forth in Thirty-fourth Statutes at Large, page 814. It is a court of exceedingly limited jurisdiction; it has no probate jurisdiction, no divorce jurisdiction, and by treaty it has only jurisdiction over citizens of the United States in China and not citizens outside of China.

The first judge of this court was Mr. Wilfley, of Missouri. He had been in office but a short time before charges of gross corruption were preferred against him. I had nothing to do with those charges, but under the charges he was compelled to resign. There was an investigation by the Judiciary Committee of the House, and that committee decided that he was at least temperamentally unfitted for the position of judge. Thereupon, Mr. Thayer, who was for a long time a clerk in the Treasury Department, was appointed.

The CHAIRMAN. Is he a lawyer?

Mr. CURTIS. Well, he studied two years at one of the night schools here—the Columbia Law School—between 1871 and 1872, but he was appointed as a clerk in the Treasury Department and remained in that department for 13½ years.

Mr. HART. Was he a lawyer when he was appointed judge?

Mr. CURTIS. He had been admitted to practice in 1872.

Mr. HART. In the District?

Mr. CURTIS. Yes, sir.

Mr. HART. He was admitted to practice before the Federal courts?

Mr. CURTIS. Yes; but he remained in his position as clerk in the Treasury Department 13 years after being admitted to practice, and had no opportunity whatever to exercise his profession or to practice and gain experience. After he resigned from the Treasury Department, during Mr. Cleveland's first administration, he was a clerk in several other offices here in Washington, and then went into

partnership for the practice of law. He formed a law partnership and practiced before the departments and the Court of Claims.

Mr. Thayer went out to China, and he landed there about the middle of March, 1909. Before three months had passed he had left China and went to a place called Rokkosan, about 7 or 8 miles back of Kobe, Japan—up in the mountains—where he leased a bungalow and remained until fall, leaving no one to attend to the business of the court at Shanghai, and leaving the inferior court, the United States Consular Court, which has a jurisdiction up to \$500 gold, and a criminal jurisdiction as to offenses for which imprisonment of 60 days may be imposed, in charge of a young man who never studied law, who had never been in a law office, and who knew nothing whatever about law. He was empowered to hold for trial any citizens of the United States who might be brought before him on charges made by any irresponsible person. The court had decided that citizens of the United States were not entitled to a grand jury or trial by a petit jury, and so——

The CHAIRMAN. What court had decided that?

Mr. CURTIS. The United States Court for China.

The CHAIRMAN. Do you mean the particular court you are speaking of?

Mr. CURTIS. Yes.

Mr. HART. But the writ of habeas corpus would apply there the same as here?

Mr. CURTIS. Yes; it would apply, but it has been denied by the court. The judge, while in Japan, received his salary on vouchers which were dated and purported to have been signed at Shanghai, China, not in Japan, and on those vouchers his salary was paid. The charges are set forth in my first specification, which I would ask the committee to please insert in the record because it is rather voluminous.

During the first and second years at Shanghai, while he held the office of judge, he was away 5 months and 25 days without the knowledge of those above, or without leave of absence from anyone. No one knew anything about it as far as the Washington authorities were concerned. The vouchers are set forth under the seal of the Treasury and transmitted by letter from the Assistant Secretary under date of April 11, 1913. These vouchers, and other vouchers, were asked for by Senator Hughes, of New Jersey, and I would ask that those vouchers be inserted in the record. If the committee cares to inspect them, I would be glad to show them to the members of the committee.

The CHAIRMAN. It might aid the committee if you would make a statement as to the specific charges against this judge at Shanghai, and, subsequently, you can enlarge upon the charges by bringing forth such evidence as you have and attaching to that evidence the official documents bearing out your statements. Do you make charges against any other men?

Mr. CURTIS. The others involved in the charges are accused of collusion. These reports could not have been made without collusion; that is, collusion on the part of the disbursing officer and the consul general out there who rented buildings and then subleased them to the court at advanced pay.

The CHAIRMAN. This committee would have nothing to do with the investigation of charges against the consular service because that belongs to the State Department and another committee has jurisdiction over that subject.

Mr. FERGUSON. I would suggest that Mr. Curtis be permitted to file anything that is necessary to illustrate any statement he makes.

The CHAIRMAN. Oh, yes.

Mr. CRAMPTON. I would be glad to have Mr. Curtis extend his statement as to the jurisdiction of the court, and the amount and importance of the business that comes before the court.

Mr. CURTIS. I will be pleased to do that.

Mr. HART. I am wholly ignorant of the treaty providing for this court, and it might be well to have that included in the record.

The CHAIRMAN. I think so. Mr. Curtis has already testified that there was an act of Congress under which this court was created. I presume that if the act was made a part of this record it would show the nature of the treaty.

Mr. HART. Unless the treaty departed from it. Does the treaty depart from the act at all in any detail?

Mr. CURTIS. No; the act is in harmony with the treaty.

Mr. HART. The treaty does not depart at all from the act?

Mr. CURTIS. No.

Mr. HART. So that anyone reading the act would understand the treaty?

Mr. CURTIS. Well, I would not say that. I should say that one reading the act would get a clear idea of the jurisdiction of the court. But the treaty is very brief; it simply says that the United States shall have power to try offenses against citizens of the United States in China. I lay stress on the words "in China," and desire to call attention to the fact that the court has usurped probate jurisdiction in face of the act creating the court which says that the court shall exercise supervisory control over the discharge by consuls of their duties in China.

Mr. HART. You are thoroughly familiar with the act and the treaty?

Mr. CURTIS. Yes.

Mr. HART. And for the purpose of this investigation anyone reading the act would have a sufficient knowledge of the treaty?

Mr. CURTIS. That is correct. I think it would be sufficient to merely have a reference to the treaty.

The CHAIRMAN. What treaty is it?

Mr. CURTIS. It is the treaty of 1844; that is, that was the first treaty. It has been incorporated in the treaties ever since that time, because, as you know, we have had a number of commercial treaties since then.

Mr. HART. What is the domestic condition of this man? Is he a married man?

Mr. CURTIS. He has a wife. I believe he was married shortly before he went out there.

Mr. HART. Has he any children?

Mr. CURTIS. No; he was married late in life.

Mr. HART. Did he take his wife there with him?

Mr. CURTIS. Yes.

The CHAIRMAN. Suppose we make as a part of this statement the act of Congress creating the court to which reference has been made. Have you a copy of the act with you?

Mr. CURTIS. No; but I can cite it to you.

The CHAIRMAN. We will put it into the record.

Mr. CURTIS. It is the act of June 30, 1906, Thirty-fourth Statutes at Large, page 814.

(The act follows:)

[PUBLIC—No. 403.]

AN ACT Creating a United States Court for China and prescribing the jurisdiction thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China except in so far as the said jurisdiction is qualified by section 2 of this act. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

That the seal of the said United States Court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court and all transcripts, records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue.

SEC. 2. The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed \$500 United States money and in criminal cases where the punishment for the offense charged can not exceed by law \$100 fine or 60 days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States Court for China: *Provided, also*, That appeal may be taken to the United States court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States. The said United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within 60 days after the death in China of any citizen of the United States or any citizen of any territory belonging to the United States the consul or vice consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall as additional effects come from time to time into his possession immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said 60 days a schedule under oath of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice consul

shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within 10 days after any such sale report the fact of such sale to said court and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require, where it may be necessary, a special bond for the faithful performance of his duty, to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required or for failure to properly perform his duties in the premises the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof.

SEC. 3. That appeals shall lie from all final judgments or decrees of said court to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken.

SEC. 4. The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts and all decisions, judgments, and decrees of said United States court shall be enforced in accordance with said treaties and laws; but in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same, subject to the terms of any treaties between the United States and China.

SEC. 5. That the procedure of the said court shall be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: *Provided, however,* That the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections 4106 and 4107 of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court.

SEC. 6. There shall be a district attorney, a marshal, and a clerk of said court, with authority possessed by the corresponding officers of the district courts in the United States as far as may be consistent with the conditions of the laws of the United States and said treaties. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of \$8,000 per annum for said judge, \$4,000 per annum for said district attorney, \$3,000 per annum for said marshal, and \$3,000 per annum for said clerk. The judge of the said court and the district attorney shall, when the sessions of the court are held at other cities than Shanghai, receive in addition to their salaries their necessary expenses during such sessions not to exceed \$10 per day for the judge and \$5 per day for the district attorney.

SEC. 7. The tenure of office of the judge of said court shall be 10 years, unless sooner removed by the President for cause; the tenure of office of the other officials of the court shall be at the pleasure of the President.

SEC. 8. The marshal and the clerk of said court shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint,

with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of \$5 for each day the sessions of the court are held at their respective cities. The office of marshal in China now existing in pursuance of section 4111 of the Revised Statutes is hereby abolished.

SEC. 9. The tariff of fees of said officers of the court shall be the same as the tariff already fixed for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States.

Approved, June 30, 1906.

The CHAIRMAN. And you will furnish a copy of the section of the treaty to which you have referred?

Mr. CURTIS. Yes; I will furnish a copy to the stenographer.

The CHAIRMAN. And that will be inserted in the record.

(The section referred to follows:)

By Article XXV of the treaty of 1844 (concluded July 3, 1844) between China and the United States it was provided as follows:

"All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction of, and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China." (This provision has been continued in force by the various treaties made with China since 1844.)

See Senate Document 357, Sixty-first Congress, second session, volume 1, page 203.

Mr. CURTIS. The section giving us extra territorial jurisdiction in China is set forth in the very first treaty, and it has been incorporated in the various commercial treaties since then.

It is difficult to give the committee an idea of the local atmosphere of Shanghai. It is one of the most important ports in imports and exports in the world. There is more business done in Shanghai in a week than in San Francisco in a year. It has an enormous population—about 450,000 Chinese and not more than 20,000 foreigners, including Japanese. I do not presume there are over 3,000 Americans in Shanghai and its suburbs, but there are enough to have a jury and grand jury.

The court is absolutely independent of everybody and everything except the United States Circuit Court of Appeals, and that is 7,000 miles away.

The CHAIRMAN. Which one?

Mr. CURTIS. The ninth circuit.

The CHAIRMAN. Of California?

Mr. CURTIS. Yes, sir; but that court is too far away for appeals. It takes \$125 to go from Shanghai to San Francisco, and after you get there the living expenses are high. It costs a great deal to employ attorneys, and it takes a long time for the case to come to trial, and consequently American citizens in moderate means are completely at the mercy of the court.

There are no inspectors of the Department of Justice who investigate their accounts, and as the disbursing officer, who was at one time the clerk of the court, is in collusion with the judge, they act as they wish. Reports, however, are sent to the State Department, but the State Department, I am sorry to say, is one case withheld a contract

which was absolutely necessary for the Auditor of the State Department to have in order to know anything about these accounts or rents of buildings, and so forth.

The CHAIRMAN. Right there let me ask you whether I understand you correctly to say that the clerk of the court is the only checking officer upon these expenses?

Mr. CURTIS. He was the only checking officer up to the latter part of 1911, when the court transferred the duties of the finances of the office to the marshal, whose name is Wilson.

The CHAIRMAN. Is the clerk appointed by the judge himself?

Mr. CURTIS. He is appointed by the President, as is also the marshal, under the advice and with the consent of the Senate.

Mr. HART. What is the practice in regard to the appointment of the clerk and the marshal; that is, are they appointed on the recommendation of the presiding officer?

Mr. CURTIS. The clerk and marshall are appointed by the President. In this particular case, when Mr. Wifley resigned his district attorney also resigned, and then the clerk, Mr. Hinckley, who was not a lawyer, through the recommendation of Mr. Thayer, was made United States district attorney. Mr. Hinckley had never been admitted to practice in any State or Federal court in the United States, and had never graduated from any law school or studied in any law office, but he had studied political economy in the Columbia University. I am told that the last year's course in political economy embraces a little law, but he was not a lawyer or an experienced lawyer, such as was made a prerequisite in the act creating the court before a man could be appointed district attorney. In other words, he had to be a lawyer of experience and good standing, but this man was not a lawyer, and was not a lawyer in good standing. However, through the friendship of Mr. Thayer he was appointed district attorney, and through these reports I will show that Mr. Hinckley transmitted the accounts to the Treasury Department.

The CHAIRMAN. What are the specific things you charge?

Mr. CURTIS. The second charge, after stating in the first specification about the expenditure of \$5,333.10 on false vouchers——

Mr. FERGUSON. You say false vouchers for payments amounting to \$5,333.10. What do you mean by that?

Mr. CURTIS. The vouchers which were signed by the judge and sent for approval and payment to the auditor and Treasurer of the United States were not signed at Shanghai at the time they purported to have been signed; the certificates on these vouchers state that the payments were for salary due him for services in the Empire of China, but, as a matter of fact, he was in the Empire of Japan, entirely outside of the jurisdiction of China and outside of the jurisdiction of the court for which he was appointed judge.

Mr. FERGUSON. Are they false in any other sense than that?

Mr. CURTIS. They are false in the sense that his pay was not due, because he was out of the jurisdiction and the services were not rendered, and he was not in China when they purported to have been paid.

Mr. FERGUSON. Then they are false in that he got money out of the Government that was not due him and for services he did not render?

Mr. CURTIS. Exactly.

The CHAIRMAN. Does the law provide how his salary shall be paid to him?

Mr. CURTIS. Yes; his salary is \$8,000.

The CHAIRMAN. Is it to be paid quarterly?

Mr. CURTIS. It is paid monthly. His salary is \$8,000 a year; it is \$1,000 more than the salary of the judges in the United States circuit courts of appeals, \$2,000 more than the salary of the United States district judge, and \$4,000 more than the salary of the Territorial judges of the Hawaiian circuit courts.

Mr. CRAMTON. How do the living expenses in China compare with the living expenses in the United States?

Mr. CURTIS. They are three times as cheap as in the United States; \$8,000 in China has a purchasing power of \$25,000 in the United States.

He does not try more than 12 cases a year, as will be shown by the records of the court and by the North China Herald, which is on file in the Library of Congress.

Mr. CRAMTON. Is that due to the lack of attention to business or the lack of business?

Mr. CURTIS. It is due to the lack of business. The greater number of these cases have been against gamblers and prostitutes, and vagrancy charges. Those are the cases, outside of probate cases, the jurisdiction of which this court has usurped. The law covering those cases has been in force since 1792. Under the treaty with China our consuls can look after the personal effects of citizens dying intestate. It is the only country in the world where consuls have a free hand. The act to which I have just referred was passed in 1792 and has never been repealed; it remained in force and was followed until the time Mr. Goodnow took hold of matters and started to probate estates himself and looted the estates. That law and the regulations of the Department of State, which have the force of law under the statutes of the United States, strictly impose the duty of conserving the estates of citizens who die abroad, and in China, upon consuls and vice consuls. Sections 1709 and 1710, Revised Statutes, cover the subject, and under those sections they are to take possession of the personal estate left by any citizens of the United States, to inventory the same, to collect the debts due the deceased, sell such part of the estate as shall be of a perishable nature, pay his debts, and to transmit the balance to the Treasury Department to be held in trust for the legal claimant or claimants; it is also provided that notification of the death of the deceased shall be sent to the State Department, to be published in the local papers published at the domicile of the deceased in the United States. But since this court has been established it has usurped that probate jurisdiction, and nobody knows what they are doing with the estates. They refer to the estates not by names but by docket numbers, so that no one can tell anything about them. A most interesting question will come up in relation to these estates. I have a letter from the Acting Secretary of State, John Bassett Moore—Mr. Bryan was away at the time—in response to a letter written by Senator Hughes; it is addressed to myself, and the third section of this letter, page 4, reads as follows:

The act of June 30, 1906, establishing the United States Court for China, gave the court "supervisory control over the discharge by consuls and vice consuls, of the duties prescribed by the laws of the United States relating to

the estates of decedents in China" and required consular officers to file with the United States court inventories of effects, deaths, etc., of decedents. The act provides further that consular officers "shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within 10 days after any such sale report the fact of such sale to said court and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require where it may be necessary a special bond for the faithful performance of his duty to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such securities as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof."

In May, 1907, a case in re probate of will of John Pratt Roberts came up in the United States Court for China, and regarding the probate jurisdiction of the United States court that court held as follows: "We hold, therefore, that prior to the inauguration of this court the consular court of the United States in China had jurisdiction in the matter of the estates of Americans decedent in China, in all cases, and that now this court has jurisdiction in such matters when the value of the estate involved is above \$500 United States currency, the consular courts retaining their jurisdiction over those estates which are valued at less than this amount." A copy of this decision is appended.

Now, gentlemen of the committee, from this you will see that the decision quoted is directly in violation of the very act creating the court. They hold that the court has probate jurisdiction, but it is directly in violation of the act creating the court, in violation of the laws relating to decedents dying abroad, the duty being imposed by law upon consuls and vice consuls to take possession of the personal estate left by any citizen of the United States dying abroad. The object and purpose of that decision was simply to give the court full power to go in and handle these estates and make no accounting whatever.

The CHAIRMAN. I would like to go back to the \$5,000, because the question of jurisdiction is not so important to this committee as the question of the charge made that these vouchers were falsified. I would like to ask further, does the law providing for the payment of the judge's salary require him to be in China, or is there a lack of any specific declaration with regard to that in the law?

Mr. CURTIS. There is nothing said in the law. It is drawn up similar to other acts creating courts. It is presumed that the judge of a district or circuit court in the United States appointed to office will remain within the jurisdiction of his court, at least that he will not go to Europe.

Mr. HART. Did his absence retard the administration of justice?

Mr. CURTIS. As a matter of fact, it did. There were a number of cases which came up, one an admiralty case in which I acted as attorney, rather an interesting case. If you wish the facts I can give them to you. There were a number of other cases, to my knowledge, and the court should have been there. There was the case of one citizen who was held in jail some months because there was no one to try him and pass upon the case, because Mr. Thayer was in Europe.

The CHAIRMAN. The period to which you referred formerly, he was in Japan?

Mr. CURTIS. Yes, sir. My second specification relates to 10 months' absence from China.

The CHAIRMAN. In one year—in the same year?

Mr. CURTIS. Two years. Ten months and seven days in two years.

The CHAIRMAN. What years were those?

Mr. CURTIS. 1911 and 1912.

The CHAIRMAN. In what year was he in Japan?

Mr. CURTIS. In 1909 and in 1910, and in 1911 and 1912 he was in Europe, England, and in America.

Mr. CRAMTON. Do I understand that his salary would not have been paid without certificates being filed to certify to his having been in China at the time?

Mr. CURTIS. That is the requirement that is made of United States judges. It is the practice of the Auditor for the State and Other Departments to check the accounts of the marshals and judges, and there must be a marshal or some one within the judicial district to certify, but there is no one out in China to look after the accounts. The court was created by Congress, but nothing was said as to who was to have jurisdiction or under whose control it was to rest, or who was to determine anything about the court. There was nothing said about its accounts, who was to supervise the accounts, or who was to grant leave to the judge.

Mr. CRAMTON. Suppose he had filed a certificate showing the true facts, that he was in Japan at the time, would he have received his money?

Mr. CURTIS. That is a most interesting question. The State Department disavows any authority to grant a leave of absence. It doubts its authority in the letter which I have just read, and Mr. Thayer said absolutely nothing to the State Department or anyone else that he was in Japan. I returned to China in 1909. I was a member of the bar of the consular court, the jurisdiction of which—over \$500—was succeeded by the United States Court for China. I returned to China in 1907, and I went back on an appeal case to the United States Circuit Court of Appeals at San Francisco, the case of the Cunningham estate, and after I had argued and submitted that case I returned to China, in 1909. About the 30th of June, 1909, I saw Mr. Thayer in Kobe, Japan. I went over on the steamship *Siberia*, of the Pacific Mail Steamship Line. Mr. Thayer said that it was absolutely necessary for me to go down to China and take an examination before he would allow me to practice; that Judge Wilfley made that rule and that he intended to enforce it. I told him that I did not wish to antagonize the court and I would go down to Shanghai and take the examination. He said that he would write to the clerk. I went down, saw the clerk, and he refused to give me any papers unless I filed a petition, which I declined to do. Then I went back to Kobe. I told him that I had been to the United States in one case to oppose his predecessor, Mr. Goodnow, and that I thought it was a grave wrong for me to have to travel thousands of miles, at great cost, in order to be permitted to practice at that court. He flew into a rage and implied that he would punish me for contempt, but finally he cooled off and said that he would give me an examination himself. Here is the paper [exhibiting], and there is the seal of the court [indicating] showing that I passed a satisfactory examination on the top of Rokkosan, a high mountain in Japan.

Then I returned again to Shanghai to practice law, and in the very first case I appeared before him he fined me for alleged contempt \$25 gold or 10 days in jail, because he said a petition for a rehearing which I filed was contemptuous, and that he would not permit me to continue to practice until I apologized, and so I apologized.

Mr. FERGUSON. I would like to go back a little. You referred to Mr. Bryan being in charge of this matter?

Mr. CURTIS. Mr. Bryan has said—I have seen him since—that in this court the judge should be named by the Department of State or by its officials, but the first Secretary of State was inclined to think that it was otherwise, but at any rate the court is supposed to be under the Department of State, but there is no law really as to it. There is no exequatur issued by the State Department to the judge to be presented in China. The judge is in the same position in relation to the foreign office of China as a special examiner of the Treasury Department in the matter of customs should he go to China, or an inspector of the Immigration Service of the Department of Labor and Commerce abroad.

Mr. FERGUSON. Are the vouchers returned to the State Department or the Attorney General?

Mr. CURTIS. To the Auditor for the State Department, the same as the accounts of other courts.

Mr. FERGUSON. How are these accounts paid? Take this item of \$5,000, was it audited and paid by the State Department or the Attorney General?

The CHAIRMAN. As I understand, the Auditor for the State and Other Departments audits the accounts.

Mr. CURTIS. He is the auditor for the Department of Justice also.

The CHAIRMAN. There is only one auditor for all the departments, so far as the courts are concerned, no matter how the courts are appointed. For instance, in Hawaii, Porto Rico, and the Philippine Islands there are courts appointed by the War Department. This court is appointed through the State Department. There are other courts in the United States appointed by the Attorney General's Office, but the auditor for all these courts and the officials of the courts is the same identical man.

Mr. FERGUSON. I want to go back to the item of \$5,000 which you mentioned. You referred to that as a false voucher?

Mr. CURTIS. Yes, sir; as false and fictitious and in violation of section 35 of the Criminal Code.

Mr. FERGUSON. And one item is that he verified that while in Japan and not in his own jurisdiction?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. Is it false in any other respect? What I have in mind is this: Is it false in that it calls for money never earned or not due for salary?

Mr. CURTIS. Precisely.

Mr. FERGUSON. Please point that out.

Mr. CURTIS. I will show you the voucher.

Mr. FERGUSON. In other words, is the forgery there for the purpose of getting money?

Mr. CURTIS. There is the voucher [exhibiting].

Mr. FERGUSON. Is that a part of his salary?

Mr. CURTIS. Yes, sir. This is dated in Shanghai, July 30, 1909; he was in Japan at that time.

Mr. FERGUSON. That was true as to the amount, but false as to where he was?

Mr. CURTIS. He was not in China the whole month of July.

Mr. FERGUSON. You have also said that some of the vouchers called for money not due or earned?

Mr. CURTIS. The total amount on the face of the false vouchers for salary during the months of 1911 and 1912 was \$8,666.40. The total amount overpaid in violation of section 35 of the Criminal Code on false vouchers during said absence is \$6,822.14.

Mr. FERGUSON. Covering what period?

Mr. CURTIS. Covering three years. The aggregate amount of false vouchers, including salary for March, 1910, and Hong Kong expenses, was \$14,861.10.

Mr. FERGUSON. Is that all for salary?

Mr. CURTIS. Part for expenses.

Mr. FERGUSON. For my own satisfaction, I want to get before this committee information as to where he got money that was not due him for salary or any legitimate expenses. The general statement of your charge included, as I understand, that, and I want to get into the record some proof of it.

Mr. CURTIS. I will give you that later.

Here it is right here. Here is an account which is false. Here is an account of a trip to Canton and his expenses are false. These are the vouchers.

The CHAIRMAN. What do they aggregate?

Mr. CURTIS. Here is the summary; I have made an indictment, drawn up after a case which was tried in Colorado against a marshal. He was only away 24 days. The total amount paid on false vouchers was \$194.94. The amount overpaid on false vouchers for March, 1910, salary for 14 days, \$311.08, and amount overpaid for expenses, \$74.94.

Mr. FERGUSON. I would suggest that you take time to prepare a written statement as to the items which are false in the sense that he got money for expenses or any other way that was manufactured to get money.

Mr. CURTIS. Here is a summary of it.

Mr. FERGUSON. You state generally that they are false in the respect that the money he got by false statements and vouchers, and I would suggest that you put in a separate statement and sign it.

Mr. CURTIS. I will be glad to do that right now, and hand it to the stenographer.

Specification 3. That the said Rufus H. Thayer, in said Shanghai, in the Republic of China, on to wit, the 31st day of March, 1910, did knowingly, willfully and unlawfully, make and present and cause to be made and presented for payment and approval to the Auditor for the State and Other Departments and to the Treasurer of the United States, at Washington, D. C., the said auditor and the said Treasurer being then and there persons and officers in the civil service of the United States, a certain false, fictitious, and fraudulent account, bill, and receipt against the Government of the United States, to wit, an account, bill, and receipt for payment and reimbursement to him, said Rufus H. Thayer, of certain alleged actual and necessary personal expenses on circuit to Canton, China, from March 4 to 29, 1910, 26 days, amounting to \$194.94, lawful money of the United States, in words and figures set forth on pages 128, 129, 130, 131, and 132 of Exhibit No. 1, hereto attached and

made part hereof, whereas in truth and in fact, while the law creating said United States Court for China requires said court to hold a session once a year in said Canton, there was no business requiring the presence of the court there in March, 1910, and the said court actually remained in said Canton only from the morning of the 9th to the evening of the 11th of March, 1910, two and one-half days. The said Thayer could readily have returned to Shanghai, China, by the 15th day of March, 1910, instead of which he went to the British colony of Hongkong, arriving there on the morning of the 12th of March, 1910, where, instead of taking a ship for Shanghai, he remained over to the 26th of March, 1910, two weeks. That said Thayer had no appointment to an office in said British colony of Hongkong, and had no judicial authority to exercise or judicial duties of any nature whatever to perform there, and his absence of two weeks without leave from his post of duty at Shanghai or elsewhere in China, and the charging of his personal expenses in said Hongkong from the 12th to the 26th of March, 1910, to the United States as actual and necessary expenses was unlawful, and said accounts, bills, and receipts setting forth same are false, fictitious, and fraudulent.

The CHAIRMAN. I think it would simplify matters if Mr. Curtis were to specifically recite the various charges that he makes and then add to them under each head the specific things which causes him to make the charges.

Mr. HART. Let me intrude a question. You have made charges that he presented such a statement. Did he receive the money which he asked for in that statement?

Mr. CURTIS. Yes, sir; the accounts show that they have been paid.

Mr. HART. Paid to and received by him?

Mr. CURTIS. Yes, sir; it is for reimbursement.

The CHAIRMAN. As I understand, he remained there on account of his own business and charged his expenses to the Government?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. While his official business required him at that time, if there was no business at Canton, to be at Shanghai?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. Please make a summary of every expense and hand it to the stenographer.

Mr. CURTIS. Yes, sir.

The CHAIRMAN. What is your next charge?

Mr. CURTIS. The next charge is that Mr. Thayer made a false return of rent of the building at Shanghai, China, used for court purposes.

The CHAIRMAN. You have a specific instance of that recited in this statement?

Mr. CURTIS. Yes, sir; and supported by vouchers for rent and tax receipts.

Mr. FERGUSON. Which have been paid?

Mr. CURTIS. Yes, sir. I will explain that to you briefly. The consul general is entitled to 20 per cent of his salary for office rent, allowed by the President under the law. His salary being \$8,000 gold, the 20 per cent would be \$1,600. Instead of leasing offices for that amount he leased five buildings, four of which are precisely the same in every particular—four in a row. He paid 8,400 taels, as shown by the contract here, and then he turns around and leases these houses to the Government. He leases one of them—No. 16 Whangpoo Road—to the postal agent at \$50 a month, \$600 a year, and throws in besides the basement of No. 15 Whangpoo Road, the house adjoining.

The actual rent of No. 16 Whangpoo Road would be \$45 a month, or 75 taels. That is 60 cents exchange. The next building, No. 15 Whangpoo Road, the second and third floors and the garret or attic he charges the United States \$100 gold for, and he represents to Congress that that is the actual rent, when as a matter of fact it is only \$45 for the whole building. Then, he rents the fifth building to the United States court at 200 taels a month, which is \$120 gold a month; that is 60 cents exchange. Then, vouchers are sent to the auditor representing that that amount is \$200 gold, or \$80 gold more, in place of the actual amount paid, as shown by the tax receipt, which is 12 per cent of the actual rent of the building. I know from my own experience and knowledge that the rent is 2,400 taels, and not \$2,400. The vouchers from the 1st of August, 1911, to the 30th of June, 1912, 11 months, and purporting on their face to be for rent of said building for the quarters ending September 30, 1911, December 31, 1911, March 31, 1912, and June 30, 1912, amount on their face to \$2,137.75 lawful money of the United States.

The CHAIRMAN. You mean that that is the overcharge?

Mr. CURTIS. That is the total amount. You take the months and multiply by 80 to get the amount overpaid.

The CHAIRMAN. How much did the Government pay more?

Mr. CURTIS. Eighty dollars a month more than the tax receipts show should have been paid.

The CHAIRMAN. Who received that \$80?

Mr. CURTIS. That is problematical. The contract shows that Mr. Wilder paid 8,400 taels for the five buildings.

Mr. FERGUSON. Who is Mr. Wilder?

Mr. CURTIS. The consul general, renting this building at 25 per cent higher than the market value. By doing this the two houses that he used, 13 and 14, on Whangpoo Road, the consul general gets at less than the amount allowed by law.

The CHAIRMAN. I do not understand how the judge comes into that transaction.

Mr. CURTIS. The judge comes in in this way: The judge gets his quarters and has had his quarters there the last two years, and so has the marshal.

Mr. HART. His business or residential quarters?

Mr. CURTIS. His residential quarters, including electric light, heat during the winter, and electric fans if he is there. These vouchers show that it is used exclusively for the business of the United States court, and besides he gets half a dozen servants, coolies and others. The vice consuls get their quarters in Nos. 13 and 14 Whangpoo Road. The most remarkable thing is that the consul wrote to the auditor that the rent of these premises for residential purposes should have been paid or would be paid by the vice consuls, but, as a matter of fact, the records show that no rent whatever has been paid by them for residential purposes. I would like to read this letter to you to show the remarkable statement by the vice consul.

The CHAIRMAN. How is the judge connected with that transaction?

Mr. CURTIS. In this way, Mr. Chairman. The postmaster, the consul general, and the court have agreed to a sort of conspiracy to put the most favorable light that you can possibly upon it, to take

money from one appropriation and apply it to another, and thereby give these various men interested in this conspiracy or collusion a chance to get their quarters for nothing, and the marshal forwards vouchers to the Government that this house is devoted exclusively to the business of the respective officers. The United States allows over \$4,000 gold for a jail, and for incidental expenses, assistant jailers, etc., and \$100 gold for the rent of the building. They take one building where the market value is 75 taels, or \$45. They take a part of one building, a similar building, a part of that building, 15 Whang Poo Road, being rented to the Post Office Department at \$50 a month, and they rent that building to the United States Government for a jail at \$100, and men are held as prisoners, charged with crime, to answer to the United States court—have to remain in the attic or third floor of the building until the return of the judge. There is no yard, no place for exercise, and the climate is the worst in the world, the Asiatic cholera is rampant every summer, and small-pox, dysentery, malaria, and all ills that flesh is heir to. The men are housed there. They report to the Appropriations Committee that the amount of money actually expended for the rent of that building is \$100, when as a matter of fact it is only \$45.

Mr. CRAMTON. The actual value of the building is about \$45 a month. The Government pays \$120 for the quarters which are used for court purposes on the assumption that they are to be used for court purposes alone, that that is actually paid to the consul general, but the Government pays \$200, whereas \$80 goes into the pocket of the judge?

Mr. CURTIS. I do not know where the money goes. I will show you the tax receipt.

Mr. FERGUSON. Does the judge certify to the amount of this money?

Mr. CURTIS. There [exhibiting] is a tax receipt.

Mr. CRAMTON. Are we to understand that this building which is used for court purposes, that the actual commercial value of that is \$45 a month?

Mr. CURTIS. \$120 a month is the actual commercial value; 2,400 taels a year.

The CHAIRMAN. What does the judge certify to, and what does the United States Government pay for that particular building to which this has reference?

Mr. CURTIS. The Government pays \$200 a month.

The CHAIRMAN. \$2,400 a year?

Mr. CURTIS. Yes, sir. Here [exhibiting] is the tax receipt. Here [exhibiting] is the contract for it.

The CHAIRMAN. You claim that more money is collected from the Government—

Mr. CURTIS (interposing). For the building than the actual rent of the building.

The CHAIRMAN. Is that on the certificate of the judge or the marshal?

Mr. CURTIS. I will explain that. The contract for the rent of that building is signed by the marshal of the court—the contract is here. The receipt for the rent is made out by T. J. Raven, manager of the China Realty Co., and is paid to him by the compradore of the

United States court, a Chinaman who holds his office by virtue of the court.

Mr. HART. Can you answer the chairman's question briefly?

Mr. CURTIS. I will try to.

The vouchers show that the receipt was given to the compradore—all of the business in China, except of one corporation, the Standard Oil Co., is transacted through a compradore, a Chinaman who advances money and who receives money, who takes the amount he advances from the Government and makes his monthly returns. These receipts for the amount of money for rent are given to the compradore, and by him are given to the marshal or financial officer of the court, who in turn sends them to the Auditor for the State and Other Departments.

The CHAIRMAN. That is not clear to me.

Mr. HART. The Government is paying a certain sum of money for rent, and the landlord is receiving a less sum for rent; is there the certificate of the larger amount by the judge?

Mr. CURTIS. I will just see. These vouchers are sent to the first auditor by the financial agent, who is now the marshal of that court—sometime ago it was the clerk of the court. The vouchers are numbered 29, 30, 31, 32, and 33, and the taxes are paid on the rent. They do not pay taxes on the value of the building, but on the actual rent paid. The report must be made to the municipal tax office as to the actual rent. Here it is made out for 2,400 taels a year. That money is paid by the compradore, and he takes a receipt. Instead of being paid by the compradore this shows it to be paid by the marshal.

The CHAIRMAN. That does not make it clear to me.

Mr. FERGUSON. I think you had better prepare a statement in writing and bring it here.

Mr. CURTIS. I have that here.

Mr. FERGUSON. But you have it in a scattered form, and we want a summary.

Mr. CURTIS. I have the summary of all this made out, and if I may have it in the record with my evidence it will facilitate the matter, and then I can refer to the exhibits on the printed pages. I have a voluminous number of exhibits and letters.

Mr. FERGUSON. We want it summarized so that we can see where the judge got money by false certification.

Mr. CURTIS. I have the specifications fully drawn up according to law, and I have them supported by a statement of facts and law applicable thereto, and then I have the exhibits duly numbered.

Mr. FERGUSON. That this judge has corruptly received money, that is the substance of your charge?

Mr. CURTIS. Yes, sir.

(Thereupon the committee adjourned until Wednesday, September 17, 1913, at 10.30 o'clock a. m.)

COMMITTEE ON EXPENDITURES
IN THE DEPARTMENT OF JUSTICE,
HOUSE OF REPRESENTATIVES,
Wednesday, September 17, 1913.

The committee this day met, Hon. Robert F. Broussard (chairman) presiding.

The CHAIRMAN. I presume we shall continue in the manner in which we proceeded the other day, by having Mr. Curtis continue his statement. At the close of the hearing the other day, Mr. Curtis, the committee decided to ask you to formulate the charges which you make against Judge Thayer, specifying each charge and furnishing under each specification the data and the evidence which you have to bear out the charge. It was also understood that I should look over this written statement which you had already prepared, and I have gone over that. I suggest that you take the charges, without reading what they are, starting with the first and stating in your own way what it contains, without all the phraseology which you have in making the charge, and then citing the instance, briefly and to the point, which causes you to make that specific charge, and then proceed to the second one, so that the committee may have before it, without reading this voluminous statement, a synopsis of what these charges are and upon what evidence they are based. I judge that the committee would like to have it done that way. I think if you follow the document which you have before you it would be better, because the charges are set out in particular order, and we would have a better understanding of them.

I wish to state before you proceed, Mr. Curtis, that the friend and former law partner of Judge Thayer came here this morning, Mr. Coldren, and said that he had no authority to represent the judge here, but that he had been associated with him a long time and was in some way related to the judge, and asked permission to be present. I told him these meetings were open, and he said that he might consider it, as a friend, advisable to take such part as the committee would permit him to take in regard to the testimony which Mr. Curtis is about to give concerning Judge Thayer. I told him that so far as I was concerned I should have no objection at all to his being present and participating whenever he thought his friend's interests might require his services, but that I would submit the matter to the committee, and that I had no doubt the committee would be agreeable to that method of procedure.

Mr. Coldren, you may take a seat at the table and you may interrupt the committee any time you feel disposed to do so.

Mr. Curtis, please start with the first charge; state specifically what it is, in a brief way, and upon what evidence that charge is made.

STATEMENT OF MR. GEORGE F. CURTIS—Continued.

Mr. CURTIS. The first charge alleges that Mr. Thayer went out to Shanghai, and landed in Shanghai about the middle of March, 1909; that he was there scarcely three months before he left the jurisdiction of China without the knowledge of any official of the United States Government within the United States, and without sending any certificates of absence or reasons of absence, and went to Rokkoan, about 7 or 8 miles from Kobe, Japan, and remained away from Shanghai until late in the fall.

The CHAIRMAN. How many months?

Mr. CURTIS. He was absent the first time from the 23d of June, 1909, to the 20th of September, 1909, and the following year from the 23d of June, 1910, to the 21st of September, 1910; that the State Department had no knowledge of this; that he drew his salary on certificates purporting to have been signed in Shanghai, China, during those months and bearing his certificate that the money was actually due as salary, implying that the services were actually rendered, whereas as a matter of fact he was not within the then Empire of China, the services were not rendered, the Auditor for the State and Other Departments knew nothing about it, as I said before, nor the Attorney General, the President, or the State Department, and for that time the amount overpaid on those vouchers was \$3,888.80, and the total amount of the vouchers was \$5,333.10. The false vouchers amounted to \$5,333.10. Part of this money was, of course, due on those vouchers for the reason that part of the months, the beginning of June and the latter part of September in each year, were earned, for the reason that the judge was in China.

The CHAIRMAN. I understand your contention is that under the law he had no right to collect salary during that absence?

Mr. CURTIS. That contention is based on section 13 of the Dockery Act, Twenty-eighth Statutes at Large, page 210:

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent.

That being the case, the fact of no certificate of absence with reasons given, and no certificate of nonabsence, the implication followed that he was actually present within the Empire of China, and therefore entitled to the salary.

The CHAIRMAN. Upon this specification will you state what evidence you have of the fact that Judge Thayer was not in China at that time but at this place to which you have referred in your testimony?

Mr. CURTIS. I was in Shanghai at the time. I was in Kobe on the 30th of June, 1909, and saw Judge Thayer there, and I have a document here signed by Judge Thayer, a legal document, executed by

order of the court in Japan, at Rokkosan, Japan, bearing date the 28th of July, 1909, and bearing the seal of the United States court.

The CHAIRMAN. Where was the seal put on?

Mr. CURTIS. It was put on down in China. I took the order from Rokkosan down to Shanghai.

The CHAIRMAN. And there the clerk put the seal on it?

Mr. CURTIS. Yes, sir; there is the date.

The CHAIRMAN. Do the duties of Judge Thayer require him to go to Kobe, Japan?

Mr. CURTIS. He has no jurisdiction outside of China.

The CHAIRMAN. Does his jurisdiction extend all over China?

Mr. CURTIS. All the open ports of China—Shanghai, Tientsin, Hankow, and Canton—and he is supposed to be at those places once a year.

The CHAIRMAN. He is supposed to be at each of those places once a year?

Mr. CURTIS. Yes, sir; although there may be no business there, he is supposed to go there. Mr. Thayer left Shanghai, June 23, 1909, on board the steamship *Tenyo Maru* for Kobe, Japan. That fact may also be established by the North China Herald for June 26, 1909, page 754, which is of record in the Library of Congress. He returned to Shanghai from Kobe on board the steamship *Derfflinger* on the 20th of September, 1909. I was in Shanghai when he returned. That fact may also be established by the North China Herald for September 25, 1909, page 750. Then he left again on the 23d of June, 1910, for Kobe, Japan, on board the steamship *Tonkin*. That is reported in the passenger list of outgoing passengers in the North China Herald for July 1, 1910, page 60, and he returned from Kobe, Japan, on September 21, 1910, on board the steamship *Tourane*. That is reported in the passenger list of incoming passengers in the North China Herald for September 23, 1910, page 752. I was in Shanghai that year both when he left and when he returned.

There was business in China that he should have attended to.

The CHAIRMAN. Was there any business pending before the court during the period of his absence?

Mr. CURTIS. Men had been arrested and cases came up for trial in the lower court, which was in the hands of the United States Consular Court, which had jurisdiction up to \$500 in gold in civil cases, and in criminal cases the offenses for which the imprisonment was 60 days, and also had power to hold for trial any person charged with felony that might be brought by any responsible person and hold those persons charged with crime to the United States court. Mr. Thayer decided that we were not entitled to a grand jury, although the act very plainly gives it to us, and held that we were not entitled to jury trials, and we had no rules of court except the old rules of 1864, which had been made by our then minister at Peking, which were not suitable for our court—wholly inadequate—and we were completely at the mercy of a young man who was absolutely ignorant of the most elementary principles of law.

The CHAIRMAN. Who was the young man; was he connected with the court at all?

Mr. CURTIS. He was the judge of the consular court, from which appeals lie to the United States Court for China.

The CHAIRMAN. He had no jurisdiction over this particular individual?

Mr. CURTIS. He had no jurisdiction except to hold them for trial.

The CHAIRMAN. Just as a committing magistrate?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And he had to remain in jail during the judge's absence?

Mr. CURTIS. He had to remain in jail. There was not only one case, but several cases which later came up in the judge's absence. There was one admiralty case during the judge's absence. It was the case of the old Chinese war junk *Ningpoo*, said to have been bought by the agents of the Panama Exposition, and she was being taken across the Pacific. She got about 60 miles outside of the harbor and a little blow came up and she had to put back into the harbor in distress. Thereupon they discharged her crew. The boat was flying the American flag. The crew, under the navigation laws of the United States, was entitled to a month's pay. This was denied them. A part of the first month's pay had been taken by the first mate as graft for the privilege of going on board this ship. We sued for the month's pay. There was quite a number of men. The court, the young man who had no knowledge of law, held that the case was not properly brought in admiralty, and should have been brought in law. This young man had been a student interpreter at Peking. Some one put a rider on the diplomatic and consular appropriation bill transferring the judicial duties of the consul general to the vice consul, and the only qualification this young vice consul had was that he studied the Manchu dialect of the Chinese language and went down to Shanghai to act as judge of the United States consular court. The United States judge was away, outside of China, and the citizens of the United States were completely at the mercy of this man.

The CHAIRMAN. I understand you to say, then, that the law does not give any jurisdiction to anybody else than Judge Thayer?

Mr. CURTIS. But he has jurisdiction up to \$500.

The CHAIRMAN. Was that a case below \$500?

Mr. CURTIS. The case was below \$500. I sued for each one of these men.

The CHAIRMAN. Then, properly speaking, the case was tried by the proper judicial authority in the first instance?

Mr. CURTIS. One case was. That was the admiralty case, but the judge was away. We could not make an appeal to him. The sailors being poor men, without any means of livelihood, they were later a charge upon the charity of foreign citizens.

The CHAIRMAN. Were they American citizens?

Mr. CURTIS. A number of them were; the others, being under the American flag, were entitled to the protection of the United States laws and of the American flag.

The CHAIRMAN. What was the outcome of the whole proceeding?

Mr. CURTIS. A number of these men had to be supported by the community.

The CHAIRMAN. Did they recover any of their wages?

Mr. CURTIS. No, sir. A number of them lost their clothes and the little stuff they had in the blow or gale, and then they became public charges. To make matters worse, several of them were ar-

rested as vagrants, and afterwards thrown into jail and locked up after being convicted in the American consular court of vagrancy.

The CHAIRMAN. Were there any other cases besides the case to which you have referred?

Mr. CURTIS. There was the case of——

The CHAIRMAN (interposing). Have you the cases cited in the statement which you have prepared?

Mr. CURTIS. I have all the cases referred to.

The CHAIRMAN. You have them all?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Proceed, Mr. Curtis.

Mr. CURTIS. Here is the case of Adolph Grimsinger, who was a straggler from the crew of the U. S. S. *Cincinnati*. There is a reward of \$25 offered by the Navy for stragglers. Instead of the marshal going out and arresting this man, the British policemen, employed by the municipality of Shanghai, which, by the way, is like a little republic, brought the man to the consulate instead of delivering him to one of the ships in the harbor, and, then, instead of putting this man on board a ship, the following day they took him before the consular court, which had no jurisdiction, and tried him.

The CHAIRMAN. Who had jurisdiction?

Mr. CURTIS. The United States naval officers have jurisdiction over stragglers and deserters. It is no civil offense for a sailor from a United States naval ship to overstay his leave. He was put in jail, some time later to be put on board the ship. That night he broke jail. There not being any United States citizen jailor to guard the jail, although the United States has made liberal provision for one, the consul general employed a cheap Sikh Indian, at about \$20 (Mexican) a month, to guard the jail. This sailor hit the Sikh jailor over the head with a bottle and got away, and several other prisoners got away. This prisoner had to remain until Mr. Thayer returned, and then he was tried and sentenced to the penitentiary, instead of sending this man aboard the ship.

The CHAIRMAN. That is not a charge against the judge, except that the absence of the judge might have delayed the trial?

Mr. CURTIS. He had to wait in jail until the judge came back.

The CHAIRMAN. How long was that?

Mr. CURTIS. This occurred in June, and Judge Thayer did not come back until October.

The CHAIRMAN. And he could not get bail except through Judge Thayer?

Mr. CURTIS. Judge Thayer would hold to bail for those offenses. The sailor being poor, he could not get bail, even if Mr. Thayer had been there; but he was entitled to a speedy trial.

Mr. HART. Had Judge Thayer, and no one else, jurisdiction to allow bail?

Mr. CURTIS. Of felonies only.

Mr. HART. Was this a case of felony?

Mr. CURTIS. He was held on a felony charge.

The CHAIRMAN. He was held on a felony charge, and no other court had jurisdiction over felonies except Judge Thayer?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And Judge Thayer was absent, and therefore the man was detained in jail pending the return of the judge?

Mr. CURTIS. Yes, sir. In the meantime the consular court had sentenced this young man in June to 60 days' imprisonment. After the 60 days were up he had to wait until the judge came back. Had he been there the appeal might have been made at once.

The United States district attorney split the offense, jail breaking, into three offenses, made up of jail breaking, assault with a deadly weapon, and, third, robbery of the jail key. Under the criminal law those two latter offenses would have been merged into the jail breaking, but they made three different offenses.

The CHAIRMAN. Mr. Curtis, the facts we want to get at are the charges which you make against the judge, his absence, and his collection of salary during the absence in violation of the law, as you have quoted to the committee. Of course if the Department of State has a man occupying a position of vice consul who is incompetent to occupy that position, clearly the judge is not chargeable with that. He is only chargeable with his own acts. His absence is pertinent to this investigation, but the fact that a man assuming jurisdiction over that case when he had not is not properly chargeable to the judge. So please limit your testimony to the charges against the judge. We can not investigate the consular service; that does not pertain to the jurisdiction of this committee, but to another committee of the House.

Mr. CURTIS. Very well. The second specification charges Mr. Thayer——

Mr. TAVENNER (interposing). You have read the law requiring judges to notify the Department of Justice or the Auditor for the Department of Justice when absent from their place of duty. Does the law say that the judge personally must notify this authority—the Department of Justice.

Mr. CURTIS. Section 13 of the Dockery Act (28 Stat. L., 210) says:

Before transmission to the Department of the Treasury the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by this disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent.

Mr. TAVENNER. Then, the law is that every judge, when he is away from his place of duty, must report to the Auditor for the Department of Justice that he has been absent, and state why he has been absent?

Mr. CURTIS. I would not say every judge. I do not know that the judges of the United States Supreme Court and of the United States Circuit Court of Appeals do. I know that is the case in the Territory of Alaska. If the marshal does not send it, the judge does not get his salary.

Mr. TAVENNER. Do you know whether other judges similarly situated are in the habit of notifying the department that they are absent?

Mr. CURTIS. There is no other such court.

Mr. TAVENNER. Does this law only refer to that court?

Mr. CURTIS. No, sir. This act was passed in 1894, before this court was created.

Mr. TAVENNER. How many months was Judge Thayer absent at this time, just approximately?

Mr. CURTIS. Five months and twenty-five days the first time, and the second time 10 months and 5 days. In all he was away from China in about 3 years 1 year 4 months and 16 days.

Mr. FERGUSON. About one-half of the time?

Mr. CURTIS. Yes, sir.

Mr. HART. In three years that he has occupied that office?

Mr. CURTIS. That is, up to October, 1912.

Mr. HART. I understand you to say that there is no provision at all in the law creating this court or in its rules providing for a vacation or the manner of obtaining a vacation of the judge?

Mr. CURTIS. No. The act is drawn similar to the act covering the United States district courts. China is twice as large as the United States——

Mr. HART (interposing). Do you think that you could briefly answer that question?

Mr. CURTIS. Yes, sir. The act is similar to the act covering the United States district courts, and nothing is said about leaves of absence.

The CHAIRMAN. You have the act there?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Did we not embody that in the testimony taken day before yesterday?

Mr. CURTIS. Yes, sir; and section 15 of the treaty.

Mr. CRAMTON. As I understand your point, it is not only that he failed to secure a leave of absence, but he led the department to believe that he was not absent by filing certificates that were falsely dated at Shanghai, thereby giving them to understand that he was not absent?

Mr. CURTIS. That is the first specification. Now, in the second specification I made the same charge, but I received a letter from the Department of State, which is of record here, from Mr. John Bassett Moore, in which it is stated that while the Department of State had no authority and felt it had no authority to grant leave to a United States judge, he stated that Mr. Thayer had notified him of his intended leave, but did not say how long he was going to stay or how long he would be away. That is the 10 months' absence.

The CHAIRMAN. Ten months consecutively?

Mr. CURTIS. No; in two years. I will read the exhibit, the letter from the department, if I may.

The CHAIRMAN. What is it that you wish to read, the letter from Mr. Moore?

Mr. CURTIS. The letter on that point.

The CHAIRMAN. As I recall it, you read that the other day.

Mr. CURTIS. I think I referred to it.

The CHAIRMAN. During the 10 months that you speak of now, the second period of his absence, was there anyone in jail who was de-

prived of an opportunity to present his case before the court because of the absence of the judge, and were there any civil suits which suffered by virtue of his absence?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Have you cited those?

Mr. CURTIS. Yes, sir; I have referred to them.

The CHAIRMAN. It may be well to go over these in that way, so that the committee may have a better understanding of what the charges are, and then take up the documents as they are offered, either the entire committee or a subcommittee of the entire committee, and see whether we should have those printed so that we might have them in hand to question the witness. I think that would be a good way. I think we should have a general statement from Mr. Curtis before we undertake to go through the very voluminous evidence and determine whether or not we should have it printed, so that each member of the committee may have a copy to cross-examine Mr. Curtis. The judge is absent, but he should be given a hearing on these charges, and he might want to cross-examine the witness and make up the defense, if it is necessary to make one.

Mr. FERGUSON. I would like to ask Mr. Curtis a question in regard to this first charge. Do you charge that this judge got money in the way of salary illegally by sending his certificate from Shanghai, where he should have been, instead of disclosing his true whereabouts, that he got salary that he was not entitled to?

Mr. CURTIS. Yes, sir; that is the charge precisely.

Mr. FERGUSON. And therefore he was not entitled to this salary?

Mr. CURTIS. That is it.

Mr. HART. This is argumentative, but it is somewhat illuminating. I see that the act creating this particular court provides that the court shall hold sessions, and that a session of the court shall be held in each of these cities at least once annually at stated periods. Has this court at any time stated any period when it would hold court in any of these jurisdictions, these territorial jurisdictions, and is it not wholly within the power of this court to say when it will hold court at any particular place, provided, however, they be held once annually?

Mr. CURTIS. That is a correct statement. The court has the power to hold court at these various open ports—Canton, Hankau, and Tientsin—once annually, and as it suits the convenience of the court. The court goes to these places, although there may be no cases to be tried.

Mr. HART. Then, if Judge Thayer held court in each of these places once a year he would be accomplishing the purpose of the act, would he not?

Mr. CURTIS. Yes; but that refers to holding court at Tientsin, Hankau, and Canton, the seat of the court being at Shanghai.

Mr. HART. Can you point to any provision in this act which requires Judge Thayer to hold court at Shanghai at any definite period or for any definite term?

Mr. CURTIS. No; there is nothing in the act to that effect. He is appointed judge of the United States Court for China, the jurisdiction being in China. For instance, if a case of vagrancy arises in Harbin, away up in Manchuria——

Mr. HART. Then, Mr. Curtis, if there is nothing in the act which requires him to hold court at Shanghai for any definite term, it is

within his judgment as to what time he shall hold court there, is it not?

Mr. CURTIS. Yes; if the business is there.

Mr. HART. Then his error in not holding court at the times you think he should have held it was largely an error of judgment, was it not?

Mr. CURTIS. It was, yes; but if I may answer that question further, had he been in China we could have reached him.

Mr. HART. I do not know whether I made myself clear in the question.

Mr. CURTIS. I think I understood your question. You asked whether it was an error of judgment for him to leave the Empire of China and go to a foreign country.

Mr. HART. My question was directed to the holding of court at certain periods in China.

Mr. CURTIS. The charge is——

Mr. HART. Not the charge, but the fact.

Mr. CURTIS. The fact is that he was outside of the Empire of China and not at any place in China where he could have been reached.

Mr. HART. Is there anything in the act which requires him to remain at Shanghai, China, or in China itself, for any definite term?

Mr. CURTIS. No more than any act creating a United States court would require the judge to remain within the territory of the United States and not go to Japan or South America.

Mr. HART. That is the parallel, is it?

Mr. CURTIS. That is the parallel. In other words, suppose a circuit judge or a district judge in California was assigned to duty in the circuit court of appeals in Seattle and takes a boat from San Francisco and goes to Seattle by way of Victoria or Vancouver, British Columbia, and on his way spends a month or more at either of these British ports, without leave, and charges his hotel expenses there and salary to the United States. In such a case I should say he would be obtaining money under false pretenses, because he is outside the jurisdiction of the court and is not discharging his duties. That is a parallel case with the one where Mr. Thayer goes to Canton from Shanghai by way of Hongkong, and after spending two and a half days at Canton returns to Hongkong and spends two weeks there instead of going on to Shanghai, Hongkong being the place where he transships, takes another steamer.

Mr. HART. In brief, if he had properly performed the duties of his office, he would have remained at Shanghai and taken care of his cases—is that your idea?

Mr. CURTIS. That is it.

Mr. HART. But there is no statutory regulation in regard to that?

Mr. CURTIS. No more than relates to any court within the United States.

Mr. HART. Then there is no statutory regulation in regard to this court?

Mr. CURTIS. None as to this court.

Mr. TAVENNER. Did he charge his expenses in Japan to the Government?

Mr. CURTIS. I have that in the third charge. I have gone a little ahead.

The CHAIRMAN. Do not jump; let us get it in the order in which you have it there.

Mr. CURTIS. Under the second specification I have made a summary of the amount of salary due and paid to Judge Thayer from the 1st day of April, 1911, to the 30th day of October, 1911, and from the 1st day of May, 1912, to the 5th day of October, 1912; the amount of salary overpaid on false vouchers—salary vouchers—during said periods, together with the total amount set forth on the face of said false vouchers during the time Judge Thayer was outside of China without leave——

The CHAIRMAN. What is the amount?

Mr. CURTIS. The amount for 10 months and 7 days is \$6,822.14. That is the amount of salary he was overpaid during 1911 and 1912. The amount of salary due him while in China during April and October, 1911, and May and October, 1912, was \$1,844.26, making a total of \$8,666.40.

The CHAIRMAN. And he collected how much?

Mr. CURTIS. That made the total amount \$8,666.40.

The CHAIRMAN. Your contention is that he ought not to have been paid for the time he was absent from the jurisdiction of the court?

Mr. CURTIS. Yes; that he was overpaid.

The CHAIRMAN. And that represents the time he was absent from the jurisdiction of the court, does it?

Mr. CURTIS. Yes. He was overpaid \$6,822.14.

The CHAIRMAN. Your contention is that under the law he is not entitled to that and that his vouchers were falsely made?

Mr. CURTIS. Yes.

The CHAIRMAN. Because he led the Government to believe he was performing the duties of his office, while, in fact, he was not there at all, but in some other country?

Mr. CURTIS. This second charge embraces \$8,666.40.

The CHAIRMAN. Do you answer "yes" or "no" to that?

Mr. CURTIS. I ought to explain——

The CHAIRMAN. No; give me your answer to that. You have given us two items, and the total of the two items, and you have said he was overpaid \$6,000 and some odd dollars. That represents——

Mr. CURTIS. It does not amount——

The CHAIRMAN. I just want to identify these items. The item of \$6,000 and some odd dollars represents salary certified to by Judge Thayer as being due him for the performance of his duty, when, as a matter of fact, he was not in China and within the jurisdiction of his court, but somewhere else, and your contention is that he was not entitled to that \$6,000 and some odd dollars?

Mr. CURTIS. That is it, exactly.

The CHAIRMAN. That is the gravamen of your charge?

Mr. CURTIS. Yes.

The CHAIRMAN. And he had collected altogether \$8,000 and some odd dollars during the period you mention, and your contention is that \$6,000 and some odd dollars ought not to have been paid?

Mr. CURTIS. That is the case.

The CHAIRMAN. Now, pass on to the next specification.

Mr. CURTIS. My third specification charges that Judge Thayer on the 31st day of March, 1910, made false demands and claims or caused them to be made, which demands and claims were presented for pay-

ment and approval at Washington for expenses and salary on a trip to Canton.

Mr. FERGUSON. That is the third specification, you say?

Mr. CURTIS. Yes; that is the third specification.

Mr. FERGUSON. And you say you have those vouchers and documents?

Mr. CURTIS. I have those vouchers and documents here under the seal of the Secretary of the Treasury.

The CHAIRMAN. We will not look at those now, and I will ask you to simply answer this question: What is the amount of the overcharges on these false vouchers and were the amounts collected from the Government?

Mr. CURTIS. The amount paid on the face of these false vouchers was \$194.94, and the amount overpaid was \$74.94 for hotel expenses for two weeks.

The CHAIRMAN. Now, how do you know that that amount of \$74.94 was an overcharge?

Mr. CURTIS. The vouchers show that \$74.94 was the actual amount paid for expenses during the time he remained at Hongkong when he should have been in Shanghai, Hongkong being a British colony and Judge Thayer having absolutely no duties to perform there, his only reason for stopping at Hongkong being to transship from the steamer from Shanghai to Canton, and on his return on the boat on which he came from Canton transship to Shanghai.

The CHAIRMAN. Was it necessary to go to Hongkong in order to reach his other jurisdiction?

Mr. CURTIS. It was necessary to go to Hongkong to go to Canton.

The CHAIRMAN. I understand that he had to transship there, and I wish you would state whether the schedules were such as to make it necessary for him to stop there and await the next ship in order to proceed on his journey?

Mr. CURTIS. No; there is a boat leaving Hongkong every evening at about 5 or 6 o'clock for Canton, and there is a train running now from Kowloon, which is across the bay from Hongkong, to Canton. He was in Canton for two days and a half.

Mr. HART. You say there is a train running now; was there a train running then?

Mr. CURTIS. Yes. He stayed in Hongkong two weeks longer than necessary. A steamer was expected during that time—a German around-the-world pleasure trip, excursion ship *Cleveland*, and the steamer carried about 700 or 800 passengers, excursionists. He awaited the arrival of that steamer at Hongkong, and he stayed there and had the society of those passengers.

Mr. HART. Did he charge his expenses to the Government for the time he spent there?

Mr. CURTIS. Yes; he charged his expenses to the Government while there. The Auditor for the State Department held up the vouchers for these expenses, and Mr. Thayer sought to justify the charging of his hotel expenses to the fact that there was a rumor of a possible uprising in Canton against the foreigners. Although his stenographer and district attorney had returned to Shanghai, he stayed over at Hongkong, 90 miles from Canton, for fear of an uprising there, and in face of the fact that the United States has a consul general at Canton and a consul general at Hongkong. He stayed there not-

withstanding the fact that he had no diplomatic duties to perform and not anything to do with the Diplomatic Service, directly or indirectly.

The CHAIRMAN. Did the Auditor for the State Department finally allow these expenses?

Mr. CURTIS. Yes; on the representation of Judge Thayer that there might have been an uprising there he allowed the expenses. But under the Dockery Act this may be opened at any time; that is, these items may be opened at any time. As a matter of fact, the State Department is not the administrative branch that has the authority to examine these accounts; the examination should have been made by the Department of Justice.

The CHAIRMAN. I know; but the Auditor for the State and Other Departments is the official who examines these vouchers of judicial officers, and he is the official to whom I referred when I asked you whether the Auditor for the State and Other Departments had approved these vouchers and permitted the payment of this money.

Mr. CURTIS. Yes; the payment of the money was approved in face of the holding up of these accounts in the first instance and after the receipt of Judge Thayer's letter. But the letter was not addressed to the auditor, but to the district attorney, in which letter the judge explained his reasons, and the district attorney forwarded that letter to the auditor, which letter I have here.

The CHAIRMAN. Are there any other questions as to this specification?

Mr. FERGUSON. As shown by charge 3, how much was wrongfully paid to Judge Thayer under these vouchers?

Mr. CURTIS. The amount overpaid on those vouchers was \$74.94, and the time he was absent without leave during that time was 14 days, at \$22.22 a day, making \$311.08.

Mr. FERGUSON. That is the substance of your third charge?

Mr. CURTIS. Yes.

Mr. FERGUSON. And you profess to have the vouchers showing those things?

Mr. CURTIS. I have the vouchers under the seal of the Department of State.

Mr. FERGUSON. They are here now?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Now, go ahead with charge 4.

Mr. CURTIS. I might say that the next count which I have relation to——

Mr. FERGUSON. Is that charge 4?

Mr. CURTIS. Yes. It is the charge as to the collection of perquisites from the estates of citizens of the United States dying in China leaving there no legal representatives. I charge that Judge Thayer's holding that the United States court there has probate jurisdiction over all amounts over \$500 of citizens dying intestate is in direct violation of the act creating that court and in direct violation of sections 1709 and 1710 of the Revised Statutes, and that the decision of the United States Court for China holding that the United States has probate jurisdiction was made for the sole purpose of grafting, and that they have been grafting on estates there of citizens dying intestate, that they have not made returns or in-

ventories as required by law, and have not even returned the names of citizens who have died there, but have returned the estates as of certain docket numbers. I charge that they have been collecting perquisites from the estates for their own uses, and I am informed and believe, from what clients of mine have told me, and I charge, that these estates have been looted. In support of that I ask leave to show that they have rendered a decision to the effect that the court has probate jurisdiction; I have a copy of the decision in re the Pratt probate case. I wish to state that if the committee will summon Mr. Latham, of the office of the Auditor for the State Department, who has charge of estates of citizens dying abroad, it will be found that no inventories have been filed with regard to estates of citizens of the United States who have died in China since this court was created. In fact, no inventories have been filed since the time of John Goodnow, in 1897, who was under precisely the same charges that I am now bringing, and who was sued on his official bond; the American Surety Co. allowed judgment to go against it by default, and Mr. Goodnow was permitted to resign, but he never came back to the United States.

The CHAIRMAN. Let us see whether we can not get that in definite shape. You claim that that court has no jurisdiction in matters of estates of citizens who die in China?

Mr. CURTIS. Yes. The act provides specifically that the United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China.

Mr. BAILEY. Who has probate jurisdiction?

Mr. CURTIS. The probate court of the decedent's domicile in the United States, and under the treaty as set forth here China has only given the United States the right to decide questions arising between citizens of the United States in China, and has given the United States no right to decide between citizens in China and citizens in the United States. If a person dies in China leaving next of kin or creditors in the United States, or if a will turns up with two witnesses or with three witnesses, as required by the State of Maine, this court has absolutely no probate jurisdiction to determine what constitutes a due execution of the will or as to the number of witnesses necessary. That is a right reserved to the States under the general laws of the United States and has never been given to the United States. In the Constitution it is a right reserved to the States.

The CHAIRMAN. Assuming that you are correct in your interpretation of the law, that that court has no jurisdiction in the matter of settling estates, do you claim that the judge has assumed jurisdiction over such cases?

Mr. CURTIS. I have a decision here to show that he has.

The CHAIRMAN. Has he exercised that jurisdiction?

Mr. CURTIS. He has exercised that jurisdiction, and the ruling is made in that decision that that court not only has jurisdiction, but that the lower court has jurisdiction up to \$500, so that they have two courts with probate jurisdiction in the same place.

The CHAIRMAN. Has that jurisdiction been exercised by either or both of these courts?

Mr. CURTIS. It has been exercised by both of them.

The CHAIRMAN. Have you a list of the estates that have been settled under this assumption of jurisdiction on the part of Judge Thayer?

Mr. CURTIS. I have the docket numbers.

The CHAIRMAN. Do you know who the parties are?

Mr. CURTIS. I do not, except as to two of them.

The CHAIRMAN. Can you ascertain from the docket numbers just whose estates are involved?

Mr. CURTIS. No; it is impossible. That is one of my complaints.

The CHAIRMAN. Your complaint is, first, that they have no such jurisdiction, and, second, that they are exercising that jurisdiction?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Your next complaint is that they simply number these estates without saying whose estates they are and that they loot the estates?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And cover up the evidence by not stating the names of the decedents?

Mr. CURTIS. Yes, sir; that is, as far as Washington knows anything about it.

The CHAIRMAN. And as far as the next of kin know anything about it?

Mr. CURTIS. Well, I will not say that the next of kin do not know and do not get some of this money; they probably get the major part of it, but some do not get anything out of an estate. You take the cases of prostitutes who die out there, and their relatives will not care to acknowledge them.

The CHAIRMAN. Have you any cases of that character to cite to us, where a prostitute has died out there with an estate and where the estate has been administered by the usurpation of this jurisdiction on the part of Judge Thayer and where the next of kin have not received the money?

Mr. CURTIS. Yes; I can cite the case of a woman named Allie Duncan; I think her real name was Gonzales. I might state that I have a client out there——

Mr. HART. Where did she die?

Mr. CURTIS. At Shanghai.

Mr. HART. When did she die?

Mr. CURTIS. She died in the month of July, I think, 1912.

Mr. HART. Did anybody represent her as the legal representative of her estate?

Mr. CURTIS. No. Judge Thayer at that time was in England——

Mr. HART. I am trying to carry my thought along. Did anybody represent her as a lawyer?

Mr. CURTIS. No one.

Mr. HART. Did she have any recognized heirs in Shanghai or elsewhere that you know about?

Mr. CURTIS. I understood that she had relatives in San Francisco.

Mr. HART. About what was the extent of her property, and was it real or personal?

Mr. CURTIS. It was personal property.

Mr. HART. About what was the amount of it?

Mr. CURTIS. I do not know the full amount of it, but there was a very long inventory, which I saw published in the North China Daily News.

Mr. HART. Then there was an inventory. In what court was that inventory filed?

Mr. CURTIS. There was no inventory filed. It came about in this way: The stenographer of the court, a man named Mr. Murray, took charge of the estate. I had a client named Lee Tai, who is a large furniture dealer, and who had some claims against this woman. Murray advertised in the North China Daily News that this property would be sold, naming a lot of household furniture, and Lee Tai wanted to protect himself. I saw Murray and I said, "What authority have you to handle this estate and to publish yourself as the administrator of the estate?" He said, "I have been appointed by a cablegram from England signed by Judge Thayer."

Mr. HART. If the name of Allie Duncan appeared in the proceedings in this case and in the advertisements, it probably appeared in the docket, did it not?

Mr. CURTIS. It would appear in the docket.

Mr. HART. If it appeared in the docket in this case, how do you account for the names not appearing in the other cases?

Mr. CURTIS. That is where I misunderstood you. I am only referring to the accounts sent on to Washington and as to certain fees charged against estates.

Mr. HART. Then the names of all these deceased persons may be obtained by a reference to the docket at Shanghai?

Mr. CURTIS. Yes. I went to the State Department and asked if they had them, but they could not furnish them; they made a request for them, but they have not received them, and since that request the district attorney has been on. I do not know what they have done.

Mr. FERGUSON. You do not know whether Judge Thayer got any money wrongfully?

Mr. CURTIS. I do not think he shared in it, but he made it possible for other men to handle the estates and wrongfully collect fees. He knew the statutes and knew that these fees were being wrongfully charged and that perquisites have been charged that should not have been charged and that the money collected was not deposited as it should have been deposited.

Mr. FERGUSON. And that is contrary to law, you claim?

Mr. CURTIS. It is contrary to the statute, which says that all money received in the name of the United States must be deposited with the Treasurer of the United States, to be drawn against by vouchers.

Mr. HART. His judicial construction of the statute was that he had this authority. Has there ever been a review by any other court of that construction?

Mr. CURTIS. It was sought to be reviewed in the Cunningham case. If I may go into that case, I would say that Mr. Cunningham——

Mr. HART. Not for the purpose of my question, unless the chairman wants it.

Mr. CURTIS. I can show you how we sought to review it. The case was taken up in the circuit court of appeals. Mr. Cunningham died

out there leaving a very large estate. This was before this court was established. The consul general, James L. Rodgers, administered the estate and transmitted some \$44,000 gold to one of the heirs. The will was a faulty will, we claimed, in that it only had two witnesses, whereas the laws of the State of Maine, the decedent's domicile, required three witnesses. In that case the consul would not accept service and the marshal would not make service. Later Mr. Rodgers left the town. Then complaint was made to Washington and consent was secured to waive service. Suit was filed and Judge Wilfley said he would rule against me whatever the case was, and he did. I filed a complaint, and they filed a plea in bar, and instead of filing a replication I filed a demurrer, which was overruled. That, to all intents and purposes, was a final judgment, and the case was taken up on appeal, as all other cases had been before that, but the court held that it should have come up on a writ of error. After argument before the circuit court of appeals in San Francisco it was held that the case was not brought up on final judgment and that it should have been brought up on a writ of error instead of on an appeal, and the case went off.

The CHAIRMAN. That was during Judge Wilfley's time?

Mr. CURTIS. Yes.

Mr. HART. Since then has any case been taken up to ascertain the jurisdiction Judge Thayer had in China in connection with the court created by this act?

Mr. CURTIS. No; no case has been taken up. It is a very costly proceeding to go to San Francisco, as it is 7,000 miles away.

The CHAIRMAN. The question was asked whether that matter had been taken up with the appellate court and whether judgment had been rendered as to the jurisdiction of Judge Thayer.

Mr. CURTIS. It might be better understood if I could give the local coloring out there. A person who dies intestate, leaving no legal representatives, has nobody to look after his interests, he is friendless; for that very reason in 1792 Congress, in creating the State Department, imposed the duty upon consuls of the United States of taking charge of the estates of citizens dying abroad, in countries which permitted them to act, to collect their estates, pay their debts, and to transmit the balance to the Treasurer of the United States to be holden in trust for the legal representatives of the decedents. That is specifically described by sections 1709 and 1710 of the Revised Statutes.

The CHAIRMAN. That law allows fees?

Mr. CURTIS. To the United States.

The CHAIRMAN. To the United States, but not to the officers. The duty of the officer under that act is to take the entire estate in charge, pay off the indebtedness, and transmit the entire amount left over to the Treasury of the United States?

Mr. CURTIS. To the Treasury of the United States as the holder in trust.

The CHAIRMAN. And your contention is that instead of doing that fees are being charged by the court?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. That fees are being charged by the court after having assumed jurisdiction over these estates. What has the State

Department held with reference to these matters? Clearly the State Department is aware of the fact that fees are being charged, because when the settlement is made the accounting would show the amount that has been charged and retained out of the estate for fees. What has the State Department held in regard to that matter?

Mr. CURTIS. The State Department says that the United States Court for China, having the jurisdiction of a United States court, has held that it had probate jurisdiction, and that the department could not go against the decision of a United States court.

The CHAIRMAN. That is the holding as to the jurisdiction, but I have asked what they held in regard to the retention of fees. What has the State Department held as to the retention of fees, amounting to 1 per cent, I believe you said, by officers appointed by Judge Thayer to administer estates?

Mr. CURTIS. Mr. Carr says he knows nothing about it.

The CHAIRMAN. It seems to me that when they give an accounting of the estate, and when they have paid off certain debts due by the estate, unless they suppress the fact that they are retaining 1 per cent, or whatever per cent it may be, from the assets of the estate, the State Department must know the amount of fees retained out of the estate.

Mr. CURTIS. The fees are much more. They were 2 per cent until recently——

The CHAIRMAN (interposing). Who fixes the fees?

Mr. CURTIS. The Department of State or the President fixes them.

The CHAIRMAN. They are fixed here at Washington?

Mr. CURTIS. But in addition to those fees there are other fees that are charged; there are perquisite fees charged for collecting the money.

The CHAIRMAN. Do you make that charge now?

Mr. CURTIS. I make that charge.

The CHAIRMAN. Then you can pass on to the other ones.

Mr. FERGUSON. Under this fourth charge you charge that Judge Thayer, or some one under him, got certain fees illegally from the estates of decedents in that country?

Mr. CURTIS. I charge that.

Mr. FERGUSON. And you state that you have among your papers vouchers showing that fact?

Mr. CURTIS. I charge that I have vouchers here showing that no inventories of estates have been sent except in two cases, one of which was the case of a man who died in London——

Mr. FERGUSON (interposing). Can you specify where Judge Thayer got anything wrongfully from the administration of these estates?

Mr. CURTIS. No, sir; I can not.

The CHAIRMAN. Suppose you pass on to the other charges.

Mr. CURTIS. My other charges relate to malfeasance in office, and I do not know whether this committee would have jurisdiction to go into that or not—that is, taking fees for filing cases, but I can——

Mr. HART (interposing). Did he do these things in his judicial capacity?

Mr. CURTIS. Yes, sir; and I have the cases here set forth in detail.

Mr. FERGUSON. That is under the fifth specification, is it not?

Mr. CURTIS. The next specification I should have gone into, and I will go into that now.

The CHAIRMAN. Is that No. 5?

Mr. CURTIS. This will be No. 4.

The CHAIRMAN. No, sir; No. 4 pertains to the assumption of jurisdiction by the court in probate matters. I would suggest that you keep them in the same order, so that we may not change the order in which you have fixed them yourself.

Mr. CURTIS. The fourth specification goes into the charge, or makes the charge, that Mr. Thayer, in collusion with Mr. Wilder and others out there, entered into an agreement to pay from funds of the United States \$200 per month for the rent of a building at No. 12 Whangpoo Road, to be used as a United States court building, and that contract is on file here at the State Department. The actual rent of this building, as shown by the municipal tax receipts, is 200 taels per month, which, at exchange 60, amounts to \$120 in gold a month, and, notwithstanding that the actual rent of the building is \$120 gold, or 200 taels per month, the Government is charged \$200 per month, making a difference of \$80 per month. The vouchers covering this transaction are set forth here, and all the details going to make up this charge are here. I might say, in explanation of this matter, that Mr. Wilder, the consul general, is empowered by law to expend an amount equal to 20 per cent of his salary for rent of consular offices. His salary is \$8,000 per annum, and he is authorized by law to expend 20 per cent of the amount of his salary for the rent of consular offices. Now, instead of entering into a contract for rent of offices alone, he entered into a contract for the rent of five buildings, four of which are in a row on Whangpoo Road, numbered, respectively, 13, 14, 15, and 16 Whangpoo Road, and the fifth building is numbered 12 Whangpoo Road, and that is used for the court. He rents these five buildings at a total rental, as shown by this contract, of 700 taels per month, or 8,400 taels per year, which, at exchange 60, amounts to \$5,040 in gold. Sometimes it would be a little more than at other times, when the rate of exchange is higher. Each of these four buildings in the row had a market rental value of 75 taels per month, or \$45 per month. Mr. Wilder made a contract with the postal agent for No. 16 Whangpoo Road and the basement of No. 15 Whangpoo Road at \$600 per annum, or \$50 per month. The postal agent used the basement of No. 16 and the basement of No. 15 Whangpoo Road for the business of the post office, and the upper floors of No. 16 he used for residential purposes, but his vouchers against the Post Office Department for the rent of these buildings represent that the buildings are used solely and exclusively for official purposes.

Mr. FERGUSON. Can you show that?

Mr. CURTIS. Yes, sir. The second and third floors and attic of No. 15 Whangpoo Road are rented at \$100 per month for the purposes of a jail. There is no yard on these premises where the prisoners can exercise; in summer the climate is a deadly one, especially in the latter part of the summer, and Asiatic cholera, dysentery, and other diseases prevail; yet no proper provision is made for the prisoners in that regard. The British Government takes care of its prisoners in a humane manner, but our prisoners are confined in this attic.

Mr. FERGUSON. What does Judge Thayer have to do with that?

Mr. CURTIS. Mr. Thayer authorized his marshal to enter into a contract to take one of these buildings at the rental I have stated, knowing at the time that the buildings had been rented, as shown by various tax receipts, at \$200 tael, or \$120, per month.

Mr. FERGUSON. Did Judge Thayer do that?

Mr. CURTIS. He authorized it.

Mr. HART. Did Judge Thayer's wrong consist in certifying to the rents? I believe you stated on your former hearing that he certified the rents improperly.

Mr. CURTIS. He knows about all these things.

Mr. HART. Will you answer my question?

Mr. CURTIS. I beg your pardon.

Mr. HART. I believe you stated on your former hearing that the wrong of Judge Thayer consisted in the fact that he improperly certified the rents.

Mr. CURTIS. Well, the vouchers show the names of the persons who paid the money and the names of the persons who received it.

Mr. HART. I do not make myself clear, evidently. Judge Thayer certifies to the United States Government what amount is expended for rents, does he not? That is a part of his duty, is it not? In other words, he signs the vouchers.

Mr. CURTIS. No, sir; I would like to explain that. It is a very unusual situation in China, and there is no place like it in the world. China is a country where all business is done through what is called a compradore, who is a sort of financial agent. He expends money for his principals and accounts for all balances due the Government, and there is no corporation in China that I know of, outside of the Standard Oil Co., that does not make use of a compradore in attending to its business affairs. Even the banks have compradores. They give bonds and are responsible for the collection of money by them. The United States court there has been following that system for years—in fact, ever since it was created—and the vouchers show that the money for the rent of the court building is paid by the compradore of the United States court, and that it is paid to the China Realty Co., the contract having been signed by the marshal of the court.

Mr. HART. I understood you to say on your former hearing that the judge signed some certificate or some voucher or some paper concerning these rents, or certifying to the amount of the rents, which was deceiving. Now, is that true or not?

Mr. CURTIS. The judge's name does not appear on them.

Mr. HART. His name does not appear on any paper at all concerning the rental of those buildings?

Mr. CURTIS. No, sir.

Mr. CRAMTON. I understand your criticism of the judge to be that he authorized a contract which charges the Government—that is, that he authorized this rent contract.

Mr. CURTIS. Yes, sir.

Mr. HART. Was that authority given in writing or orally?

Mr. CURTIS. Presumably it was given orally.

Mr. HART. Do you know what the fact is?

Mr. CURTIS. I do not know how it was given. I have no evidence to show that he wrote it, but I have evidence of the contract itself, which is signed by the marshal of the United States court, and I

know that he would not make a contract without being authorized by the judge.

The CHAIRMAN. This being the court building itself?

Mr. CURTIS. Yes, sir.

Mr. CRAMTON. Is the jail included in that building?

Mr. CURTIS. No, sir.

Mr. CRAMTON. What is Judge Thayer's connection with this jail proposition?

Mr. CURTIS. This is a jail for the United States prisoners as well as for the consular court prisoners, and Judge Thayer knows where the jail is.

Mr. CRAMTON. Does he have anything to do with its selection?

Mr. CURTIS. Only by implication; but I presume the judge of the United States court would have something to say about it, but I do not know. That is only my own assumption. It is a matter of common knowledge out there that the rent of this building is not worth more than 75 taels per month, or \$45 per month, and only the second, third, and attic floors of that building are rented by the Government for \$100 per month.

Mr. FERGUSON. Do you charge that there is a rake-off in this matter of rent, or not?

Mr. CURTIS. I say that in one sense, but in another sense it may be possible that Mr. Thayer and Mr. Wilder have taken money from one appropriation or money appropriated for one purpose and applied it to another so as to make the rent cheaper for the United States consular buildings at Nos. 13 and 14 Whangpoo Road.

Mr. FERGUSON. Have you anything to show that?

Mr. CURTIS. The rentals paid by Mr. Wilder would tend to show that, because the actual rent is 25 per cent higher than the market rent.

Mr. FERGUSON. Who gets that 25 per cent?

Mr. CURTIS. I do not know.

Mr. FERGUSON. You do not charge that Judge Thayer does?

Mr. CURTIS. No, sir; I do not know.

Mr. BAILEY. You charge collusion in the matter.

Mr. CURTIS. Yes, sir; I charge collusion in the matter, and I charge that it is a direct violation of the laws of the United States to take money from one appropriation, or to take money appropriated for one purpose and use it for another. There is an opinion by the Attorney General that says that this is a violation of law, and that the department doing that would have to refund the amount diverted to the proper appropriation. I say further that it is inhumane to keep prisoners in a building without any place in which to exercise, and that it is inhumane to hold them there for months for trial. The other countries out there have proper jail buildings with compounds where the men can take exercise.

The CHAIRMAN. That would be more properly a charge against the marshal than against the judge, because the marshal is the custodian of the prisoners, and he is presumed to provide for them in the safest manner possible, there being no common jail over there in which to place them.

Mr. CURTIS. The Government appropriates something over \$4,000 for the care of prisoners out there.

The CHAIRMAN. That is turned over to the marshal, is it not? The prisoners are in the custody of the marshal, are they not?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. Well, we can pass on to the other charge. What is the next charge?

Mr. CURTIS. Before leaving the last charge, I might say that the buildings for the United States court, while certified as being used solely for the business of the court, are being used for residential purposes by the marshal and the judge while there. The judge is there a part of the time, and while there he uses the building for residential purposes, and the marshal does also. They get the benefit of light and heat and janitor service. At Nos. 13 and 14 Whangpoo Road, at the consulate, Mr. George C. Hanson and a man named Hadley had quarters for which they were charged a ridiculously low amount as compared with \$1,200 a year charged the United States Government for practically the same sized rooms in other buildings. Mr. Hadley's annual rental for the third floor of No. 14 Whangpoo Road is only \$75 a year, and even that amount he did not pay.

The CHAIRMAN. What does the judge pay for his quarters?

Mr. CURTIS. Nothing.

The CHAIRMAN. What does the marshal pay for his quarters?

Mr. CURTIS. Nothing.

The CHAIRMAN. Are they men of families?

Mr. CURTIS. Judge Thayer's family has been away during the years 1911 and 1912.

The CHAIRMAN. But when the families are there, both occupy these quarters?

Mr. CURTIS. The family of the postal official does.

The marshal is an unmarried man. The family of the vice consul, Mr. Hadley, is there.

The CHAIRMAN. We have nothing to do with that. You say that the judge occupies a part of the building that the Government pays rent for as a court building as a residence for himself while there?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And that the marshal does the same thing?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And that they pay no rent at all?

Mr. CURTIS. They pay no rent at all.

The CHAIRMAN. And the rent of those quarters is included in the charge against the Government for the rent of the court building, marshal's office, etc.?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. How many specifications have you there?

Mr. CURTIS. Nine specifications; but in one of these specifications I make several other charges, as I did not care to embrace them in separate and distinct specifications.

Mr. FERGUSON. Our questions are intended to help you to get the matter in such shape as we will need it for the purpose of presenting it anywhere else. In other words, we are trying to help you to get it in proper form. I am so constituted that I must have specific things before me.

Mr. CURTIS. I have given a summary here, and I have filed a summary here to-day. I have these specific charges set out. This work is very much like Pliny's description of his house——

Mr. FERGUSON (interposing). You say you have the vouchers, and you are supposed to know what they relate to. I would suggest that this matter be put under appropriate headings, numbered, say 1, 2, 3, 4, 5, etc. That would greatly facilitate the committee's consideration of the matter.

Mr. CURTIS. I have drawn up the charges specifically, just as a lawyer would draw them up as a case for presentation in a court. Under each charge I have given the law and the facts, and I refer to the evidence which has been arranged in proper form. All of that is here.

The CHAIRMAN. I wanted the committee to get a clear understanding of what these charges consist of without reading through 150 pages of matter. After we have gone through with it in that way we will then be in a position to decide whether all of this matter ought to be printed, so as to permit the people who are affected by these charges to have knowledge of them, and thus give them an opportunity to study the charges and be given a hearing.

Mr. CRAMTON. It seems to me that Mr. Curtis could take one sheet of paper and present on it in condensed form a statement of this matter. We are not asking him now to prove his case, but to tell us what it is about.

Mr. CURTIS. I can read this paper [exhibiting it] if you like, or if you could have this printed so that you gentlemen could refer to it and question me and get all the details and facts——

The CHAIRMAN (interposing). We want first to find out whether that ought to be printed.

Mr. FERGUSON. We want to find out first whether you have a prima facie case.

Mr. CURTIS. I have the evidence here under the seal of the Department of State and under the seal of the Treasury Department, showing all these vouchers——

Mr. HART. The committee evidently desires first to see the substance of the charges.

Mr. CRAMTON. We want to know whether the charges you make, even though they are proven, are such as would make a case against these officials.

Mr. CURTIS. I have given so far facts that are established by documentary evidence, under the seal of the Department of State and under the seal of the Treasury Department.

Mr. HART. It would very much facilitate the next hearing on this matter if Mr. Curtis would prepare a brief statement of his charges under the proper headings——

The CHAIRMAN (interposing). He has the charges set forth at length in this document. I have gone over it, and it would take us three or four days to read this carefully. If we could get the substance of these charges before us and examine him with reference to the particular charges covered by the specifications, we could then decide whether we would want to have all of this matter printed so as to afford an opportunity to those who are affected by these charges to know just what the charges are and what specifications they are

predicated upon. The State Department might want to be heard on this matter, and probably we might want to hear the State Department.

Mr. TAVENNER. Mr. Curtis has a summary of these charges here, and I do not believe that this summary would take up much room. If this summary were printed we could read that and have a correct understanding of the charges. If we could have that put in the record of this meeting to-day we could read it before the next hearing. I presume that this summary covers every charge he has made, and it probably would not cover many printed pages.

The CHAIRMAN. If the committee decides to have that done, it can be done. I have not seen that document.

Mr. CURTIS. I might say to the committee that I have compiled these charges with the greatest care and have verified every statement I have made by the documentary evidence. As to the departure of Mr. Thayer and my own notes here on that phase of the matter, I have verified those statements by consulting papers on file in the Library of Congress showing the date on which he sailed and the date of his return. As to the amount of rent paid, that is verified by the vouchers, and the actual amount which should have been paid for rent is verified by tax receipts, and I would respectfully submit that if what I have set out here in relation to the charges as to the payment of rent does not constitute a *prima facie* case I will quit right here. I have spent thousands of dollars and traveled thousands of miles on account of this matter. This is not the first time I have made a trip to the United States in reference to matters in China. I came here in 1905. I had obtained a judgment against the American Surety Co. for \$6,000, but before I got through with it I had to settle with them and take 50 per cent of that amount. They had a so-called reorganization of the Consular Service which was brought about by a couple of men down at the Willard Hotel, but the result of the whole so-called consular-reform convention held on the 13th and 14th of March, 1906, was to increase the salaries of the consular offices 33 $\frac{1}{3}$ per cent and fill them with inefficient men.

Mr. CRAMTON. I have glanced over this paper, and find that the first portion of it is a recital covering very much the same ground that Mr. Curtis has already gone over before us. From the point beginning where I have the paper open, he gets down to a sort of condensed statement of his specifications, referring to them by numbers. This is considerably condensed as compared with the other papers here, but it is still quite voluminous, and includes matter of evidence rather than charges.

The CHAIRMAN. We can have that part of it typewritten so that the members of the committee may have a copy of it before the next meeting.

Mr. CRAMTON. It would be better if we could further condense that.

The CHAIRMAN. Every member of the committee can have a copy of that statement. I think every member of the committee should have a copy of that so that when we meet day after to-morrow the committee will have an understanding of what these charges are. I have some sort of knowledge of them, because I went over this document with Mr. Curtis, but it is so voluminous that we can not

get copies of it. I think that the evidence produced by Mr. Curtis justifies an investigation of this entire subject. That is my own judgment.

Mr. FERGUSON. I think that is a good suggestion, to have that matter typewritten.

The CHAIRMAN. If the committee says so, I can have this matter typewritten and a copy of it transmitted to each member of the committee.

The matter referred to is as follows:

SUMMARY OF CHARGES OF MALFEASANCE IN OFFICE AGAINST RUFUS H. THAYER,
JUDGE OF THE UNITED STATES COURT FOR CHINA.

There are nine charges set forth in specifications and supported by documentary evidence under the seals of the Department of State, the Treasury Department, the United States Court for China, and that of the United States consulate at Shanghai, China.

The first four specifications charge a violation of section 35 of the United States Criminal Code, which was before the codification of the criminal laws section 5438 of the Revised Statutes. Under these four specifications he is charged with making and causing to be made, presenting and causing to be presented, certain false, fictitious, and fraudulent accounts, vouchers, and claims to the Auditor for the State and Other Departments and to the Treasurer of the United States for approval and payment, for alleged salary due, when he was absent from his post of duty in China half the time since his appointment without leave granted, spending this time in Europe, Japan, and America; for alleged hotel expenses and other alleged expenses on circuit while staying in Hongkong, a British colony, where he had no jurisdiction, and for rent of a building in Shanghai for the United States Court for China, said false and fictitious vouchers aggregating over \$16,000 lawful money of the United States.

The fifth specification charges a denial of a writ of habeas corpus in behalf of a young woman, a citizen of the United States, who had been arrested at the instigation of a procuress by a conspiracy, on an alleged charge of owing a tailor's bill, with a view to preventing said young woman leaving China and a life of shame, she having bought a ticket from Shanghai to her home in San Francisco.

While holding that the United States consular court was within its jurisdiction to order the arrest of said young woman on this charge of owing a tailor's bill and about to leave China without paying same, the said Thayer in other cases set forth in detail in said fifth specification holds that a judgment debtor against whom execution has been sought in vain in satisfaction of said judgment may leave the jurisdiction of the court to avoid payment of said judgment, and that he is not subject to arrest as was the said young woman. Facts are stated tending to show bribery in support of his decision allowing judgment debtors to leave his jurisdiction.

The sixth specification charges that said Thayer refused to permit charges of perjury and making of false accounts to be filed against an ex-acting marshal of said United States Court for China, and threatened to disbar an attorney for seeking to file same. Other instances of gross abuse of power are set forth where he protected officers of that court where actions were sought against them, and where the said Thayer used his said high office to harass and persecute those whom he thought opposed to his high-handed actions.

The seventh specification charges gross abuse of power and the usurpation of the powers of a jury in the trial of Frederick C. Faulkner, a former clerk of the United States legation at Peking, charged with embezzlement. Faulkner was sentenced to five years' imprisonment. A writ of error was filed in his behalf, his appeal was perfected, and a stay of execution of sentence was prayed for. After sentence at Tientsin Faulkner was sent to Shanghai, where he was not permitted to see his counsel, and later sent to serve five years in the Federal penitentiary at Fort Leavenworth, Kans. The complainant in this case was one Henry Fletcher, then secretary of the said legation. He and Faulkner had been sergeants during the Spanish-American War, Fletcher in the Rough Riders in Cuba and Faulkner in the Marine Corps.

Faulkner fought his way with the Marine Corps in the allied army from Tientsin to Peking to the relief of the besieged legations during the Boxer uprising in China. Fletcher was made secretary and Faulkner clerk of the legation. Fletcher, who hailed from Pennsylvania, held himself socially superior to Faulkner, who hailed from Kentucky. Fletcher opposed Faulkner becoming a member in the Peking Club and otherwise sought to ostracize him socially. Ill will existed between the men, which finally resulted in Fletcher charging Faulkner with embezzlement.

During the trial of the case, a jury being denied Faulkner by said Thayer, the said Fletcher and Thayer were constantly in each other's society, even to walking to and from the trial together.

In a word, said Thayer prejudged the case before its trial, and then forced Faulkner to trial without a jury, the said Thayer acting as judge of the facts as well as of the law.

In a letter to the Auditor for the State and Other Departments, dated Shanghai, October 15, 1910, the said Thayer, in justifying the expenditure of extra funds for an additional marshal, made this statement: He, the said Faulkner, was "thought to be somewhat desperate. He had borne himself in an ugly manner during the trial." Said statement was absolutely false. On the contrary, the said Faulkner had conducted himself in a most gentlemanly manner. Not only this, he was in Singapore, a British colony, outside the jurisdiction of the United States Court for China, on a vacation when he heard that a warrant had been issued for his arrest. Notwithstanding this, and notwithstanding he could not have been extradited and brought back to China, he voluntarily returned to Peking, feeling confident that he could establish his innocence and that he would have a fair trial.

In striking contrast to the Faulkner trial and sentence to five years in the Federal penitentiary at Fort Leavenworth is the case of George Collinwood. Collinwood was the manager of a book store and publishing house in Tientsin. He confessed to embezzling an amount about equal to that charged against said Faulkner. He agreed to save said Thayer a trip from Shanghai to Tientsin to try his case or to take the plea of guilty as charged. Thayer was anxious to leave Shanghai for Europe on a six months' trip with pay and without leave, and it was agreed that by pleading guilty in Shanghai and not in Tientsin he would only be sentenced to three months in the consular jail at Shanghai. This Collinwood did, and he was only sentenced to serve three months in said consular jail.

The eighth specification charges that said Thayer indorsed one Frank E. Hinckley to the Secretary of State for the position of United States district attorney of the said court as a well-equipped lawyer, whereas in truth and in fact, as the said Thayer well knew, the said Hinckley was not even a lawyer and had never been admitted to practice before any Federal or State court.

It further charges that said Thayer himself is incompetent to hold the high office of judge of the United States Court for China. Citing in support of this, evidence is adduced to show that said Thayer is an ex-clerk of the Treasury Department, where he was employed for more than 15 years as clerk, having studied law at night school in Washington the first two years of his said clerkship, the only preparation he had for admission to practice law.

The ninth charge is that of grossly usurping a probate jurisdiction of estates of citizens dying in China, whereby many thousands of dollars are being diverted from the lawful channels of descent, graft perpetrated upon estates, the laws of the United States violated, even the act of Congress creating said court.

In violation of section 3617, Revised Statutes, the said court officials deduct a perquisite on all assets collected of the estates of citizens dying intestate in China, as well as from fines, etc., and make no return thereof, or of the inventories of said estates, nor the names of estates, only giving docket numbers.

GEORGE F. CURTIS.

SEPTEMBER 17, 1913.

Mr. CURTIS. I have necessarily left out a lot of important facts in this summary, because it was impossible to embrace them in a form to be understood by the committee unless I went into the surrounding facts and circumstances. Certain judgments have been rendered in that court that the judge has not had the marshal to execute, and there are cases where judgment debtors have been permitted to leave

the jurisdiction of the court where equitable proceedings had been instituted to detain them. There are cases where equitable proceedings were instituted, where all legal remedies had been exhausted, to hold the person and property of judgment debtors within the jurisdiction of the court, but in such cases Judge Thayer has permitted the defendants to leave the jurisdiction of the court, refusing to issue writs of ne exeat. The action of the court was quite different in the case of a young woman who was being held there in a house of prostitution. When she was about to leave the old trick of proceeding against her on an alleged unpaid tailor's bill was resorted to. The consular court issued a warrant for her arrest upon the charge that she was about to leave China without paying this tailor's bill. In that case Judge Thayer refused to grant a writ of habeas corpus. There was evidence to show that the woman's procuress was in conspiracy with Mr. Hadley and others to keep this girl locked up. She was to have sailed for San Francisco on the same day that the warrant for her arrest was issued. Of course I can not refer in full detail to that case here in this summary. As I have stated, there were a number of other cases in which judgment debtors were permitted to leave the jurisdiction of the court—cases in which the judge refused to allow the issue of writs of ne exeat.

(Thereupon, at 12.12 o'clock p. m., the committee adjourned until Friday, September 19, 1913, at 10.30 o'clock a. m.)

COMMITTEE ON EXPENDITURES IN
THE DEPARTMENT OF JUSTICE,
HOUSE OF REPRESENTATIVES,
Friday, September 19, 1913.

The committee met at 10.30 o'clock a. m., Hon. Robert F. Broussard (chairman) presiding.

STATEMENT OF MR. GEORGE F. CURTIS—Continued.

The CHAIRMAN. Inasmuch as we have gone pretty thoroughly into the cross-examination of Mr. Curtis upon five of the specifications, I suggest that we might take the sixth specification, which is on page 3 of this document, and if any of you gentlemen desire to ask any questions with regard to it we might proceed to question him upon this specification. We have gone over the other five specifications pretty thoroughly.

Mr. CURTIS. Mr. Chairman, I would like to submit to the stenographer a summary of the rents paid for these five buildings, and I would like to call the attention of the committee, which I did not do at the last meeting, to the fact that the contract for these five buildings is made out in such a way as to cover up the tracks of the parties to this contract in that not a single building is given separately, but the whole thing is jumbled together as one transaction. This statement gives the thing in detail.

The CHAIRMAN. Would you like to have it read?

Mr. FERGUSON. I think it would be well to have it read.

(The statement referred to is as follows:)

House No. 16 Whangpoo Road (post office) part unlawfully used for residential purposes:		
Actual rent, \$45 per month, 12 months-----	\$540	
Yearly amount actually paid-----		\$600
House No. 15 Wangpoo Road (jail) :		
Actual rent, \$45 per month, 12 months-----	540	
Yearly amount actually paid-----		1, 200
House No. 12 Wangpoo Road (United States court), part unlawfully used for residential purposes:		
Actual rent, \$120 per month, 12 months-----	1, 440	
Yearly amount actually paid-----		2, 400
House No. 13 Whangpoo Road (consulate), part unlawfully used for residential purposes:		
Actual rent, \$35 per month, 12 months-----	420	
Yearly amount actually paid-----		420
House No. 14 Wangpoo Road (consulate), part unlawfully used for residential purposes:		
Actual rent, \$35 per month, 12 months-----	420	
Yearly amount actually paid-----		420
Actual yearly rent-----	3, 360	
Yearly amount paid-----		5, 040
Actual yearly rent overpaid-----		1, 680

House No. 16 Whangpoo Road, difference overpaid \$5 per month (not including rent of basement of No. 15 Whangpoo Road, which basement was included with the occupation of No. 16 Whangpoo Road)-----	\$60
House No. 15 Whangpoo Road, difference overpaid \$55 per month, 12 months (including only the second and third floors and attic of No. 15) _	660
House No. 12 Whangpoo Road, difference overpaid \$80 per month, 12 months -----	960

Total amount overpaid yearly by the Government since August 1, 1911----- 1,680

As seen above, Nos. 13 and 14 Wangpoo Road were used as the consulate buildings, the rent of these two buildings being \$840, or \$420 each, yearly. As the consulate general was entitled to expend \$1,600 yearly for consular offices, this amount being 20 per cent of his salary, had he spent the full amount instead of the \$840, there remains the sum of \$920 unaccounted for yearly, in actual rental value. (See Rev. Stats., 1706.)

Mr. CURTIS. I would respectfully submit that officers out there have put this on record in writing, that Nos. 13 and 14 Whangpoo Road rent for \$420 each; and they are bound by their own figures, and can not get out of that.

The basement of No. 15 Whangpoo Road is used by the postal agent. The postal agent uses the basements of two of the houses—Nos. 15 and 16—for post-office purposes, and the upper part of the house, No. 16 Whangpoo Road—that is, the second and third floors and attic—for residential purposes, whereas his quarterly returns under oath show that it is used exclusively for post-office business.

The CHAIRMAN. Is that an American post office?

Mr. CURTIS. Yes, sir. It is rented from Mr. Wilder, who rents these other buildings.

The CHAIRMAN. I wanted to inquire whether this is a post office belonging to the United States Government?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. And there is an official of the Government of the United States in charge of it?

Mr. CURTIS. Yes, sir.

Mr. BAILEY. He is called a postal agent?

Mr. CURTIS. Yes, sir. The whole building, No. 15 Whangpoo Road, would be worth \$540 a year, yet the Government pays \$1,200 a year for the second, third floors, and the attic for use as a jail.

Mr. FERGUSON. Who gets the difference? You say the Government pays a certain amount of rent in excess of what it should pay. I want to know who gets the rakeoff.

Mr. CURTIS. That is hard to say.

Mr. FERGUSON. Well, we should have something specific about that.

Mr. CURTIS. I can show that the money is paid to Mr. Wilder, and I can show what he has to pay for the five buildings. I can show that the law only allows him to expend for rent an amount equal to 20 per cent of his salary, and that amount is \$1,600. The difference between the actual rent, or the amount that should be paid and the amount paid, is \$1,680. Over and above this amount, he has already drawn \$840—

Mr. FERGUSON (interposing). Who, Mr. Wilder?

Mr. CURTIS. Yes, sir. He has already drawn \$840 for the consulate, and that would leave a balance of \$920 over and above the actual rent. I do not know what becomes of that.

Mr. CRAMTON. As I understand it, you have an impression that the buildings which Mr. Thayer makes use of pay an unreasonably high rent in order that the buildings used by some other officials may pay an unreasonably low rental.

Mr. CURTIS. That is true in part, but inasmuch as Mr. Wilder has put himself on record as to Nos. 13 and 14 Whangpoo Road—that is, on record that they are each worth \$35 per month, and the other two houses, at Nos. 15 and 16 Whangpoo Road, being precisely like the houses at Nos. 13 and 14 Whangpoo Road, he must have knowledge of this difference. He rents them at \$1,200 and \$600 each yearly, the difference being as you will see. The actual rental of No. 12 Whangpoo Road is \$120, or 200 taels per month. That true rental value is shown by the municipal tax receipts. Judge Thayer has knowledge of these facts and he is estopped from denying them. Judge Thayer is estopped from denying the facts regarding the rental of his own court building, because the tax receipts show on the face of them that the rent of that building is 200 taels per month.

Mr. FERGUSON. What I want you to do, in a nutshell, is this: We are investigating the judge here, and possibly the marshal, and I would like to have you show me specifically how much rakeoff the judge or any other people got, if any, and also how much direct knowledge the judge had of the transactions.

Mr. CURTIS. This statement shows a difference of nine hundred and some odd dollars; I do not know who got it. I am simply going to bare the facts to the committee; that is, that the judge, through his financial officer, sent to Washington a contract agreeing to pay \$200 per month for a building the actual rent of which, as shown by the municipal tax receipts, was 200 taels per month, or \$120 in gold per month.

Mr. FERGUSON. Making a difference of \$80 per month, or a rakeoff of \$80 per month?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. But you do not pretend to say who got it?

Mr. CURTIS. No, sir.

Mr. CRAMTON. As I understand the situation, down the road a little ways is a building rented by the Government from the same parties for other purposes for which a rental of about \$45 per month is paid?

Mr. CURTIS. \$35; there are two buildings rented at \$35 each.

Mr. CRAMTON. Buildings that are identical in every respect with the one for which the Government pays a rental of \$200 per month?

Mr. CURTIS. They are identical with the buildings for which the Government pays a rental of \$100 per month for a part of one building, No. 15 Whangpoo Road, for a jail, and they are identical with the one for which the Government pays a rental of \$600 a year for a postal agency, at No. 16 Whangpoo Road; but they are not like the court building; the court building stands alone; it was at one time used as the old Russian consulate.

Before going on with these specifications I want to make a statement to the committee in order to place myself in a proper light.

I want to say that I came on here from Shanghai to present these charges. I want to say to the committee that I told Mr. Thayer when I saw him in Kobe in July that he should not be there; that it was against his interests to be there and that it was against the law. I told him that his place was down in Shanghai. Now, we had no rules of court there. Mr. Wilfley made some rules of court, but they were entirely inadequate. I called his attention to these facts, but he simply flew into a rage with me. I came on here once before this to bring some charges against Mr. Goodnow, the consul general, who at that time had the same jurisdiction that Mr. Thayer now has. After a great deal of trouble and much expense coming to Washington I managed to induce Representative Hughes and Representative Williams to go into the case. I do not mean to say that I had any trouble in inducing them to go into it, but I had trouble in presenting my case. Senator Hughes, then a Representative, went with me personally to see President Roosevelt, and as a result of my efforts in that matter Mr. Goodnow was ordered on here. Senator Hughes introduced a resolution of impeachment against Mr. Goodnow, and here are the charges. The New York Sun, an independent non-partisan paper, showed the condition of affairs at that time. Representative Williams——

The CHAIRMAN (interposing). That does not pertain to the charges you now make.

Mr. CURTIS. No, sir; but I want to explain my position here. Then Representative Williams introduced a resolution in the House calling for these charges, and they were printed. These charges were printed and are known as House Document No. 665, Fifty-ninth Congress, first session.

The CHAIRMAN. That has nothing to do with this.

Mr. CURTIS. What I am saying leads up to this case. Many of these charges had been filed against Mr. Goodnow before I came on. Mr. Hughes's action and Mr. Williams's action in that case led up to the reorganization of the consular service; but I am sorry to say that since the reorganization of the consular service, so far as charges being brought against consular officials are concerned, the same conditions exist—that is, they are not acted on promptly, or they are acquitted of the charges brought against them——

The CHAIRMAN (interposing). That has no connection with this matter, and we do not want to cumber the record.

Mr. CURTIS. I want to read a letter I received from Consul General McNally.

The CHAIRMAN. I do not understand that that has any connection with this matter.

Mr. CURTIS. No, sir; but I want to show that this Goodnow case made a me a great many enemies. There is a consul named McNally, who used to be at Nanking. He was charged three years ago with embezzling \$10,000. I understand that the charges have been examined by the Department of State, and inasmuch as he was promoted and sent to a better station, at Tsingtao, which is a German port on the northern coast of China——

The CHAIRMAN (interposing). But what connection does that have with this matter?

Mr. CURTIS. Now it turns up that he is charged here in the District Supreme Court, and he tells me that the charges are still open against him; and he writes me this letter——

The CHAIRMAN (interposing). I know; but that is not being inquired into here.

Mr. CURTIS. Charges are made against him, and charges have been made against me; I was charged with being an opium fiend. When the Goodnow case——

The CHAIRMAN (interposing). But we are not investigating you at all. What we want are the facts pertaining to the officials of that court. If there has been any misconduct on the part of the officials of that court which reflects upon the Government, or which is disparaging to American interests, we want to know the facts.

Mr. CURTIS. The committee wishes to take up that charge?

The CHAIRMAN. The sixth charge. Does any member of the committee wish to ask any questions in regard to the sixth charge?

Mr. CURTIS. May I call attention to one thing, and that is that Mr. McNally volunteers in this letter to come down here and be a witness before this committee as to judicial affairs out there. I will ask the committee to read the letter. He volunteers to come down here and give evidence. You will notice that this letter is written on consular paper.

(The letter referred to is as follows:)

(Care M. King, Bealston, Va.)

SUNDAY, Sept. 7.

DEAR CURTIS: The day after meeting you I had to come here, as my nerves are shot to pieces from my heart trouble, contracted in China. Would you kindly call on Hamilton, Yerkes, and Hamilton, lawyers, Union Trust Building, and see Mr. Brady there, who has my matter in charge. Do give him all information on Chinese evidence and the squeeze—China. I am preparing a reply to the charges against me, based on Chinese evidence, the credibility of which you will understand. Do this for me as a great favor, for my reputation is at stake, and I will be always obliged to you.

Am enclosing a card of introduction to Mr. Brady.

I will see you as soon as I return and corroborate your statement on Chinese judicial matters.

Sincerely,

J. C. McNALLY.

Mr. BAILEY. On what ground did Judge Thayer refuse to permit the charges of perjury to be made?

Mr. CURTIS. Against Darrah?

Mr. FERGUSON. Was he the ex-acting marshal?

Mr. CURTIS. Yes, sir. He said that it reflected upon his court, and that he would not permit it.

Mr. BAILEY. Did he refuse upon the ground that it reflected upon his court?

Mr. CURTIS. There is the charge sworn to [indicating].

Mr. Wilfley arrived in Shanghai with the avowed intention of cleaning up the town——

Mr. FERGUSON (interposing). That was prior to Judge Thayer's arrival?

Mr. CURTIS. Yes, sir; but this leads up to the case. There was a Mr. Price out there who was a graduate of the University of Missouri, as I undersand it, and who was a graduate in law, but whose business was that of running a big road house. They were after Mr. Price and Mr. Wilfley held that we were not entitled to a jury

trial out there. Mr. Price was arrested on the alleged charge of drawing a deadly weapon, and was convicted of that offense on Chinese testimony, the Chinese afterwards admitting in open court—the “mixed court”—that he had been induced to swear falsely against Price. He had lots of money, and had the case appealed to the circuit court of appeals, and was finally acquitted. Now, during that trial there was a lot of money spent. I had nothing to do with the case. Mr. Laura, who is an Italian subject, was called into the case in some capacity, as an interpreter or witness in the case, and the transcript of the record and the account of the fees of the court and the marshal's fees showed that Mr. Laura, who was a prominent business man out there, had received a certain amount of money from the Government for interpreter's fees and other fees, and he denied it. This account is sworn to by this man Darrah, and he (Mr. Laura) brought charges against this man Darrah for making false returns, charging him with perjury in swearing that he had paid him (Mr. Laura) this money. Hinckley was then clerk of the court and made up the account. The receipts were produced but the case was not permitted to go to trial, and the complaint was returned to me by the clerk of the court with a letter of transmittal. The next day, I presented another complaint, but on its presentation I was threatened with contempt of court proceedings, and, as I did not want to be in contempt of court a second time, I withdrew that case. Later on, as I was informed by Mr. Musso, an attorney, that there was the case of a woman who had been assaulted by the district attorney, a man named Bassett, and she sought to prefer charges of assault against him. That charge was also thrown out of court, and Mr. Bassett was afterwards permitted——

Mr. FERGUSON (interposing). Does that come under the sixth specification?

Mr. CURTIS. It would come under specification No. 5 here.

The CHAIRMAN. I want to ask a question right here: You said that you were threatened with contempt proceedings. Do you mean to say that when you presented a petition for a client in a court where you were allowed to practice, you were threatened with contempt proceedings?

Mr. CURTIS. Mr. Thayer, the judge flew into a rage because proceedings were sought to be brought against officials of his court. I might say that conditions in China are absolutely incredible. There is no case in the whole jurisprudence of the whole United States where a man has usurped the powers that Mr. Thayer and Mr. Wilfley usurped in China. They assumed that they had the absolute power to try charges against any man without a jury, notwithstanding the fact that under the law we are entitled to trial by jury there. People come up to him while trials are in progress and talk with him in private and prejudice him against people and their cases, and he prejudices their cases without a jury. That is something unparalleled in the history of our Government.

Mr. BAILEY. Does the law which created that court provide for jury trials?

Mr. CURTIS. No more than the law which creates the United States district court. The Constitution and laws of the United States provide for a trial by jury, and the laws of the United States are made

applicable out there. Before this court was created they were entitled to three assessors in the consular court, and if they did not agree we had an appeal. There is a section in the act creating the court which provides that the laws of the United States shall be in force in that jurisdiction, and, of course, under that we would be entitled to jury trial. Notwithstanding that, there are men now in the penitentiary at Fort Leavenworth, serving long terms, who were tried and convicted without a jury.

Mr. BAILEY. Has the right of trial by jury been specifically denied by this court?

Mr. CURTIS. Yes, sir; and there is a man in the penitentiary at Fort Leavenworth now who was convicted without a jury trial. The most serious charge that I have to make here in relation to the court——

The CHAIRMAN (interposing). Let us take this matter up in order. Have you come to the seventh charge now?

Mr. CURTIS. I have the case here——

Mr. FERGUSON (interposing). You are on the fifth specification now, are you not?

Mr. CURTIS. According to my paper, it is the fifth charge.

Mr. CRAMTON. Are you proceeding according to this document?

Mr. CURTIS. Yes, sir.

The CHAIRMAN. We were dealing with the sixth charge and you say you are discussing the fifth charge.

Mr. CURTIS. In 1905——

The CHAIRMAN (interposing). Wait a minute; let us understand one another. You furnished this document and we ought to be dealing with the same subject matter, because the specifications are enumerated.

Mr. CURTIS. I would like to take up the charge on page 2, which relates to the denial of a writ of habeas corpus.

The CHAIRMAN. Did you not deal with that the other day?

Mr. CURTIS. No, sir; I think not.

Mr. BAILEY. I thought he had gone fully into that.

Mr. CURTIS. I do not think it has gone into the record. The fifth specification relates to the denial of a writ of habeas corpus in behalf of a young woman, and then we come to a discussion of the charge that he permitted judgment creditors to leave the jurisdiction of the court.

The CHAIRMAN. I wish you would use the synopsis you gave us, so that we will know what we are talking about. If you will now take up the seventh specification and tell us what that is about, we will proceed with that.

Mr. TAVENNER. I would like to ask him some questions relative to the sixth specification. Mr. Curtis, you said that the court refused to accept your charges against the ex-acting marshal; in what form were the charges presented—were they written out?

Mr. CURTIS. Yes, sir.

Mr. TAVENNER. When you submitted the charges, what did he do?

Mr. CURTIS. I did not take the charges to him; I took them to the clerk, and the clerk said he would have to see the judge about it. So he went into the judge's chamber and I went with him. The judge flew into a rage, and later on the clerk wrote me this letter

[exhibiting it]. So I made out another charge, but when I saw that they were determined to place me in a light that would discredit both me and my client——

Mr. TAVENNER (interposing). What I want to know is this: Did you leave this paper with the court?

Mr. CURTIS. Yes, sir; with the clerk. Then the clerk returned it to me by mail, and then I filed another one. As I said, I filed another one, but the judge was still angry and threatening. The district attorney said, "We will go ahead with it." He had Mr. Laura there——

Mr. TAVENNER (interposing). What I am trying to find out is this: When you filed that second charge, did that second charge stay with the court?

Mr. CURTIS. No, sir; while I was talking with the judge in his chamber the adjoining room was occupied by this so-called district attorney. I say "so-called" district attorney, because he had never been admitted to practice in any of the State or Federal courts here. This so-called district attorney was in the room talking with Mr. Laura and Mr. Mussa. While I was talking to Mr. Thayer, I found that Mr. Laura had signed this thing, and I saw from the attitude of the district attorney that he was dead set against Mr. Laura and Mr. Musso, and that he would do everything he could to discredit these men. Seeing that, when the papers were handed over to me to sign I put them in my pocket. Then the district attorney jumped at me and took me by the hand, and I said, "If you do not take your hands off me I will defend myself." Then I walked out of the office.

Mr. TAVENNER. You say in this specification that, "Said Thayer refused to permit charges of perjury and making of false accounts to be filed against an ex-acting marshal of said United States Court for China, and threatened to disbar an attorney for seeking to file same." It would appear from your statement that you put these charges in your pocket.

Mr. CURTIS. Yes, sir; the second time.

Mr. TAVENNER. He did not refuse to permit you to file the charges, then, but he only——

Mr. CURTIS (interposing). It was not the judge; it was the district attorney. The judge said he would not permit his court to be prostituted by such cases or have the officers of his court discredited.

Mr. TAVENNER. Did he say that he would refuse to receive these charges?

Mr. CURTIS. That was the first one. When I went back the second time, I found that Mr. Laura had signed a certain thing; and that he wanted my signature; and I saw that the district attorney was dead against my client.

Mr. TAVENNER. So you did not want to file the charges when you thought there was a frame-up against you?

Mr. CURTIS. If you consider that you are 7,000 miles from the appellate court, with no jury and a hostile judge——

Mr. FERGUSON (interposing). You did not file the charges the second time?

Mr. CURTIS. No, sir; I put them in my pocket.

Mr. TAVENNER. The only reason I have for asking that question is that you make this specific charge, "That Judge Thayer refused to

permit charges of perjury and making of false accounts to be filed against an ex-acting marshal."

Mr. CURTIS. Yes, sir; he fell into a rage, and when the charges were presented the second time I saw that they were dead set against me and my client and I did not intend to run any risk.

Mr. FERGUSON. You did not file the charges the second time?

Mr. CURTIS. No, sir; I handed them back.

Mr. FERGUSON. They were filed, then?

Mr. CURTIS. I can not say that because I do not know.

Mr. FERGUSON. Well, say one thing or the other.

Mr. CURTIS. You see after my client handed them back to me in the presence of the district attorney I put them in my pocket and the district attorney wanted to get hold of them.

Mr. FERGUSON. They had not been filed then?

Mr. CURTIS. No, sir; in the next day or so I saw the judge.

Mr. FERGUSON. Did you file them then?

Mr. CURTIS. No, sir.

Mr. FERGUSON. Did the judge take them?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. What became of them?

Mr. CURTIS. I do not know what became of them.

The CHAIRMAN. What resulted from it?

Mr. CURTIS. Nothing.

Mr. CRAMTON. Do I understand from your statement in regard to these charges that you thought there was or might be a possibility of your landing in the Fort Leavenworth Penitentiary?

Mr. CURTIS. No, sir.

Mr. CRAMTON. That is, were you afraid that their abuse of power would go to such an extent that you thought you had better withdraw the papers than take the chances?

Mr. CURTIS. No, sir. How could I be responsible in a case of that kind?

Mr. FERGUSON. We are not asking that, but what are the facts?

Mr. CURTIS. No, sir. A client comes to me and pays me to represent him, and I represent him.

Mr. CRAMTON. You may have misunderstood my question. I was not intimating that you had done anything that would take you there, but I asked you whether your fear of the abuse of power by the court was such that you thought it best to withdraw such complaints as you wanted to file?

Mr. CURTIS. No, sir. The situation was this——

Mr. CRAMTON (interposing). I do not think it is necessary.

Mr. CURTIS (interposing). I might explain that: We make our livelihood out there not by practicing in the United States Court. There is very little business in that court, not over 12 cases in a year, and they are cases mostly like this and vagrancy cases. We make our living by practicing in the courts of Great Britain, France, Russia, and other nations out there. We practice in those other foreign courts by virtue of our membership in the United States Court for China, and if an attorney is suspended from practice in the United States Court for China on contempt proceedings, he can not practice in the other foreign courts. Now, there we are 10,000 miles from home and 7,000 miles from the appellate court. Do I make myself understood?

Mr. CRAMTON. Yes, sir.

Mr. CURTIS. That was done in a case where I had filed a petition for a rehearing of a case. It was the first case I brought before Mr. Thayer, and he fined me \$25 in gold or 10 days in prison for contempt of court, although the statutes relating to contempt of court limit the imprisonment to not exceeding 24 hours. I had to pay the \$25. In addition to that, I had to apologize to the court. In the meantime, I had a case pending in the Portuguese consulate court involving over 18,000 taels, and I was not permitted to go into that case. It is a sad state of affairs in China: You may imagine yourself 10,000 miles from home——

Mr. BAILEY (interposing). Is there a good deal of personal feeling between you and the judge?

Mr. CURTIS. There was. When I had been a member of the consular court since 1902, the jurisdiction of which court was succeeded to by the United States Court for China, when I had practiced law in the United States Supreme Court, in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, and, in fact, had just returned to the Orient from arguing an appealed case which I had taken to the Circuit Court of Appeals—the Cunningham will case—I stopped at Kobe on my way to Shanghai, about the 1st of July, 1909, where I met Judge Thayer, who told me that it would be necessary for me to take an examination in the various branches of the law before I would be permitted to practice before his court. I told him that I did not wish to antagonize his court and that I would take the examination, and he assured me that he would write the clerk of the court to give me the examination papers so that the examination could be given me in Shanghai. I at once continued my journey to Shanghai on the steamship *Siberia*, of the Pacific Mail Steamship Co.'s Line, and arrived at Shanghai on the 4th of July. I saw the then clerk of the court, Mr. Hinckley, who declined to give me the examination papers or to make any arrangement for my examination to practice before the United States Court for China unless I first petitioned him in writing for leave to take the examination, and he stated he would then use his discretion as to whether I could take the examination or not. I had incurred Mr. Hinckley's enmity under Judge Wilfley's administration of the court when I tried the Cunningham will case before the United States Court for China, by special leave of that court. I declined to put myself in a position to be humiliated by Mr. Hinckley's refusing to make any arrangement for the examination, and I returned to Kobe, Japan, to see Judge Thayer, and I informed him of the transaction and showed the absurdity of requiring me to take an examination after I had practiced for years before the court to the jurisdiction of which he had succeeded. Judge Thayer then gave me the examination in Kobe.

The CHAIRMAN. Is there any gentleman who would like to ask any questions in reference to the seventh specification?

Mr. FERGUSON. As I understand the seventh specification, the gravamen of your charge is that he sent him to the penitentiary without the intervention of a jury. Do you specifically charge that as a fact?

Mr. CURTIS. Do you mean the Faulkner case?

Mr. FERGUSON. Yes, sir.

Mr. CURTIS. Yes, sir. I was not permitted to see my client. After perfecting my appeal I asked for a stay of execution, as my client was about to be sent off to Fort Leavenworth and had telegraphed me to come down. I could not see him after I reached Shanghai until 20 minutes before he boarded the steamer.

Mr. CRAMTON. Is he in Fort Leavenworth now?

Mr. CURTIS. I presume so. For some reason or other, I received a letter from San Francisco notifying me that my power of attorney had been canceled, and so I could not proceed with my appeal.

I might say in that same connection that there was a man——

Mr. FERGUSON. That is a part of the specification?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. We are through with Faulkner. You charge specifically that Faulkner was sent to Fort Leavenworth for five years. He is serving the term?

Mr. CURTIS. Yes, sir; I presume so.

Mr. FERGUSON. Now, coming to the Collinwood case in the sixth specification, state distinctly what he did to Collinwood.

Mr. CURTIS. I had nothing whatever to do with Collinwood as his attorney. I met Collinwood in Tientsin; I met him there while I was on the Faulkner case.

Mr. FERGUSON. Collinwood confessed embezzlement?

Mr. CURTIS. He got 90 days in Shanghai.

Mr. FERGUSON. In the penitentiary at Shanghai?

Mr. CURTIS. Yes, sir; the consular jail. Collinwood was up in Tientsin, and the judge was going to Europe, to leave Shanghai. It would have necessitated a trip on the part of the judge to hold court at Tientsin, and so Collinwood was brought down to Shanghai and pleaded guilty, and received a sentence of 90 days and was sent to the consular jail.

Mr. FERGUSON. The eighth specification is about a man named Hinckley, and the eighth specification charges that "said Thayer indorsed one Frank E. Hinckley to the Secretary of State for the position of United States district attorney of the said court, as a well-equipped lawyer, whereas in truth and in fact, as the said Thayer well knew, the said Hinckley was not even a lawyer, and had never been admitted to practice before any Federal or State court." The substance of that is that this man claimed he was a lawyer when he was not?

Mr. CURTIS. Yes, sir; and more than that, Hinckley, the financial officer of the court, had forwarded these vouchers for salaries and office rent to Washington.

Mr. FERGUSON. Had forged?

Mr. CURTIS. Had forwarded them to Washington, and that Hinckley knew the expenses at Hongkong, and it was his duty to either warn Thayer or tell him that it was not right; in other words, they were working together.

The CHAIRMAN. Hinckley is not a lawyer at all?

Mr. CURTIS. He is not a lawyer and has never been admitted to practice. He had been minister a little while ago in Berkley, Cal., and married a woman, older than himself, with some little money, and he was appointed as clerk of the court out there. Judge Thayer

indorsed him as an attorney and as being well equipped to practice before that court.

The CHAIRMAN. Was Judge Thayer the only man who indorsed Mr. Hinckley, do you know?

Mr. CURTIS. I do not know.

The CHAIRMAN. Do you know whether he was appointed on Judge Thayer's indorsement?

Mr. CURTIS. I saw Judge Thayer's letter in the State Department indorsing him as being well equipped. He indorsed two other men at the same time. There were three applicants.

The CHAIRMAN. He recommended three, and of the three the President selected Hinckley and appointed him?

Mr. CURTIS. Yes, sir.

Mr. FERGUSON. Now, the ninth charge is more or less specifically stated here.

The CHAIRMAN. We have gone over that at considerable length already.

Mr. CURTIS. I would like to call the attention of the committee to the case of *Nee Chang Mow v. Andrews & George*, which is reported in Mr. Peirce's report on inspection of United States consulates in the Orient, document No. 665, Fifty-ninth Congress, first session, House of Representatives, page 399. I secured a judgment against the American firm of Andrews & George.

Mr. CRAMTON. Was Judge Thayer connected with that case?

Mr. CURTIS. Yes, sir. After rendering his judgment—the judgment was on a suit over the sale of a lot of exploded cartridge shells in Mukden. The Russians got there in the Boxer trouble and blew up the arsenal. The Chinese merchants of Shanghai wanted to purchase the copper metal in order to make Chinese cash coin. My client agreed to pay 72,000 taels for a lot of these shells. They sent a lot of bullets, dirt, etc.; they were not shipped according to the contract, and we sued for the difference. The board of surveyors appointed found in our favor. The judge rendered a judgment, and after the judgment the marshal would not enforce the judgment, although I asked for a writ of execution. It was also brought out and admitted in the trial that they withheld from my client 6,000 taels. They claimed that they were being sued by a Russian firm for this amount, but that was false. I went to Port Arthur and found no suit. Shortly thereafter the Japanese took Port Arthur, and there was no suit brought, can not be brought, and never will be brought, and the money is still in the hands of Andrews & George. While the marshal would not enforce this judgment, of course Andrews was perfectly safe. When we got a new court—the United States court for China—we thought that we would get the judgment enforced. In order to avoid that, they incorporated under the British laws—the Hongkong ordinances—which placed all their stock in trade under the British laws. They took in another man, B. von Fischerz, as the manager, and they went to Yokohama and conducted their business under the partnership of Andrews & George. I found Mr. Andrews was in Shanghai, passing through from the south, going to Yokohama, and I immediately drew up a bill in equity, asking for a writ of ne exeat, asking for an accounting of the money—the money still in his possession—asking for a discovery, but the court would

not issue the writ, although the bill was drawn up according to law and verified, and the judgment against them was produced, sealed under the consular seal of the court that issued it. I have it here in my documents. Mr. Thayer would not issue that writ, and therefore Mr. Andrews could do just as he wished about it. They answered and admitted the judgment, but denied that we were entitled to——

Mr. FERGUSSON (interposing). What did they answer? I thought you said that the judge would not allow you to file it?

Mr. CURTIS. I filed the case. Then I filed an amended bill, attaching interrogatories to my bill. By the way, the judge only gave me 24 hours in which to file an amended bill, when, under the equity practice of the United States, you can amend a bill as a matter of course. Then they demurred to that. The demurrer was not verified, did not have attached to it the certificate of the consul that it was not filed for the purpose of delay, and that it was well founded in law as required by the equity rules of the Supreme Court then in force. The bill came up on demurrer, and Mr. Thayer dismissed this bill in equity, and that very night Mr. Andrews went aboard the *Princess Alice*, of the North German Lloyd, for Yokahoma, and my client, who had spent a great deal of money and secured this judgment, as set forth fully in this report of Mr. Peirce, could not get a cent.

On the Bund, one of the streets of Shanghai, I met an employee of Andrews, as I have already set forth here, and he offered to bet me \$5, saying: "You will not get that money, although you have a judgment against Mr. Andrews; you can not get anything."

The CHAIRMAN. Was that before the case was decided?

Mr. CURTIS. Yes, sir; that was before the case was decided. I had worked for months on the case. Mr. Peirce examined it and made a report. I claim that Judge Thayer was supposed to know the elementary rules of equity, and he should have ruled with us. More than that, Mr. Goodnow, the consul general who rendered the judgment, had pocketed large sums of money paid into court by the defendants to the use of the plaintiffs, and my client had paid large and extortionate fees and did not care to throw away any more money. Even if he had taken an appeal, Mr. Andrews had gone to Japan, and what could the court do in the case of a man in Japan? It could not enforce a judgment in Japan, and we had no protection or other remedy whatever.

The CHAIRMAN. I understand that we have gone over all these specifications now, and, in my opinion, we probably ought to refer this entire matter to the Judiciary Committee, because the charges made, involving the court itself and its conduct, are more matters of impeachment than for this committee to investigate, except the charges which pertain to the judge's salary and the rent of the building. Those are really the only things which we have to do with. As to those two charges, I believe that it would be fair and proper that we should have the State Department, whichever bureau of the department has jurisdiction of these matters, to come and present their case and for us to get the facts from them. Of course the judge, the marshal, and the district attorney ought to be permitted to appear before this committee, meet these charges, and explain them if they can. As to the balance of these charges, I think we had better refer

them to the Committee on the Judiciary for them to take such action as they may deem proper. We will have these hearings printed and transmit a copy of them to the chairman of the Judiciary Committee, and he will do whatever he thinks should be done. It would require some time to get the judge here from Shanghai.

Mr. FERGUSON. Sufficient has been presented to the committee to justify us in taking some action.

The CHAIRMAN. We must.

What bureau, Mr. Curtis, has charge of the payment of these accounts in the State Department?

Mr. CURTIS. I do not know how to answer that question, Mr. Chairman. I have been up there, and they disavow, as far as the court is concerned, having anything to do with the court as to leaves.

Mr. BAILEY. They claim that that comes under the Department of Justice?

Mr. CURTIS. Yes, sir. Under the law the Department of Justice has jurisdiction.

Mr. FERGUSON. The auditor has all the accounts which he has approved, so we can get the facts.

The CHAIRMAN. We ought to be able to get the facts from the Auditor for the State and Other Departments.

Mr. CURTIS. I have here a voucher under the seal of the Secretary of the Treasury setting forth the expense account of Mr. Thayer as being necessary for actual expenses on the circuit to Canton signed by Mr. Thayer. The bill has been paid, although it was held up by the auditor, and I claim in point of law that Mr. Thayer, having sent that on as actual expenses, that this committee will take judicial notice of the laws and treaties of the United States saying that Mr. Thayer had only jurisdiction as judge in China, and had no duties to perform in Hongkong, and, therefore, he is estopped from alleging that he had judicial——

The CHAIRMAN (interposing). Of course, we are not going to decide that he is estopped from anything until we have heard him.

Mr. COLDREN. If the committee please, I have not heretofore asked to be heard in behalf of Judge Thayer, whom I stated in the beginning I had no authority to represent. He has no information as to these charges whatever, no knowledge of the matter.

Mr. CRAMTON. You assume that he has not?

Mr. COLDREN. Yes, sir; so far as I know he has not.

As I understand, the present views of the committee are that the only two charges that this committee feels like investigating are, first, the charge that Judge Thayer was not entitled to salary during the time that he was absent from his jurisdiction, and, second, the charge relating to some irregularity in connection with the rent of those buildings.

The CHAIRMAN. And then the other charge, relating to his traveling expenses.

Mr. COLDREN. And the traveling expenses during the short period.

Mr. FERGUSON. Another one is assuming probate jurisdiction.

The CHAIRMAN. And the charges made in reference to that.

Mr. COLDREN. As to the first of those charges, the question as to his right to receive salary when absent from his jurisdiction, it strikes me that is pure and simple a question of law which can be determined very readily from the statute referred to here—whether it has any

reference to this United States court for China, whether that matter has been thoroughly investigated by the Department of Justice and others, and the views of this committee, of course, on the law itself, and this committee is in a position to determine whether that does constitute a charge worthy of investigation—the charge that he has received salary when he was absent from his jurisdiction.

The CHAIRMAN. If you will permit me, as to the first charge to which you have referred, the situation seems to have arisen where the certificate or, rather, the voucher given by the judge showed that it came from the jurisdiction of his court when, as a matter of fact, he was not in that jurisdiction, and whether the department, under the law, would have permitted payment on that voucher for his salary in the event the department had been apprised of that fact.

Mr. COLDREN. That practice is disclosed by the Department of State and that information can be obtained by calling the proper officers.

Mr. FERGUSON. The judge might want to be heard as to the fact of his absence?

Mr. COLDREN. Certainly.

Mr. FERGUSON. Unless he concedes that.

Mr. COLDREN. My point was, assuming the facts stated were true, the first question is whether it is a matter of law. Then, as to the second charge that Judge Thayer was responsible or in any way was benefited in the matter of the rental of buildings, as I have read all the evidence taken, some of it taken before I was here the first day, and have heard the evidence the other two days of the hearings, I fail to see wherein there is any charge that Judge Thayer has benefited in any way in connection with the rental of these buildings.

Mr. FERGUSON. There is this, I think, had he means of knowledge of what others were doing irregularly?

Mr. CURTIS. The building was being used for residential purposes.

Mr. FERGUSON. And is there not the question of collusion between his subordinates?

Mr. CRAMTON. Further there might be this, as to whether the funds of the Department of Justice have been improperly expended or squandered, with his consent.

Mr. FERGUSON. Or means of knowledge?

Mr. CRAMTON. Even if he did not receive the money; if he permitted an exorbitant rate to be charged.

Mr. COLDREN. So far as that is concerned, it is my impression that the judge of the court had nothing to do with the financial matters of the court. That is my impression. The marshal and the clerk, I believe, are bonded officers, and the clerk, I believe, is responsible for the expenditures of the court.

Mr. FERGUSON. I have not examined the statute with reference to this court, but in my territory the judge has to certify to the accounts of the marshal, the jury, and everything else.

Mr. COLDREN. There is an act relating to the Territorial courts which is very specific, which I think has been held, after very careful consideration, not to apply to this court.

I am satisfied it will be desirable, in behalf of Judge Thayer, to cross-examine the witness who has appeared. I do not know, but I do not believe the person who has appeared has been under oath, so that whatever statement he has made——

Mr. FERGUSON. I have thought of that once or twice, but the statement has been more exemplifying what he filed in writing than testimony proper.

The CHAIRMAN. It has not been testimony; it has been a statement conveying certain charges to this committee.

Mr. FERGUSON. And furnishing data in support of the statement. It has not been so much testimony.

Mr. COLDREN. When it comes to the cross-examination the witness would certainly be under oath and be bound by his statement, so far as that is concerned. I do not feel in a position now to open up the defense of this case in behalf of Judge Thayer, without advice from him, certainly in such a way as to say that I could close the cross-examination of any witness who appeared, or to close the case in behalf of Judge Thayer on any of these points. I simply speak at all about them for the purpose of suggesting to the committee that it seems to me a very serious question as to whether or not on those points the committee felt like going further, any case had been made out—that is, any case other than might be settled by a complete and thorough examination of the law and from such information as they might secure from various sources as to the practice.

Mr. FERGUSON. My idea generally in reply to that suggestion is this, that this is not exactly a court now, but what we are doing is somewhat in the nature of a grand jury investigation to find out whether or not there is enough here to call for Judge Thayer. This is not a court. We have allowed this gentleman to come here and file certain documents and to explain them as he goes along as well as he could. This is not a court.

Mr. COLDREN. Of course, his documents alone, without his statement, mean nothing to this committee; they constitute no irregularity or no charges.

Mr. FERGUSON. Your contention would be proper in a court rather than here. We are groping in the dark and getting information as best we can.

The CHAIRMAN. This committee is appraised of certain charges which affect the finances of this Government. We have not placed the person who makes these charges under oath, because we want to know what the charges are and whether there is sufficient evidence and documents to warrant an investigation of the facts alleged. Now, the committee has come to the conclusion that there is sufficient evidence to call the Auditor for the State and Other Departments to inquire concerning the vouchers showing how the money has been disbursed, what the rules of the department are with regard to these vouchers, how they are passed upon, and by whom they are passed. That is all this committee has decided. If after hearing these statements the committee comes to the conclusion that the charges are sufficiently substantiated, in all fairness, of course the judge ought to be heard, either through counsel or personally, and time will be given him by this committee to come here and be heard.

Mr. COLDREN. I would suggest in addition to the Auditor for the State and Other Departments that the Chief of the Consular Service would be a proper witness.

The CHAIRMAN. For what purpose?

Mr. COLDREN. To explain the relation of the Consular Service to this court. It seems that a large part of one of the charges here is

that Mr. Wilder, who was in the Consular Service, rented certain buildings, and that there was irregularity in renting those buildings, but the evidence connecting Judge Thayer with that transaction is so vague that it fails to appeal to my mind as evidence thus far.

Mr. FERGUSON. But it is sufficient to my mind to call Judge Thayer to answer as to there being collusion of the officers and underlings.

Mr. COLDREN. Before a United States judge is called to account, should there not be some evidence of collusion presented to warrant it?

Mr. CRAMTON. Do you expect the Chief of the Consular Service to furnish such evidence?

Mr. COLDREN. Not necessarily, but the chief of that division is thoroughly familiar with the relations existing in the Consular Service. This court has always been held to be under the State Department instead of under the Department of Justice, and that has been held after very careful consideration of the law by the Attorney General and by others. That is the present practice. The State Department audits these accounts, and the auditor happens to be the same officer who handles the accounts of the State Department and the Department of Justice, but they are handled in the division which handles the accounts of the Department of State.

Mr. TAVENNER. What appropriation does this money come from, the appropriation for the State Department or the appropriation for the Department of Justice?

Mr. COLDREN. How they are classified in the appropriation bill, I am not sure. I never examined them, but I know that they are handled by the State Department officials. I have never looked into that, as to whether they come under the head of the State Department or not.

The CHAIRMAN. We can get all of that evidence from the Auditor for the State and Other Departments.

Mr. COLDREN. I am informed that the appropriation for this court is carried in the consular and diplomatic bill, which is the State Department bill.

Mr. TAVENNER. Does Judge Thayer have to sign or in any way authorized or indorse these accounts? Is his signature used in any way in paying the rental of the buildings there?

Mr. CURTIS. As I stated yesterday, they give a receipt to the Chinese comprador.

Mr. TAVENNER. How does the judge figure in the payment of the rental of this building?

Mr. CURTIS. The marshal has made a contract with Mr. Wilder, and, of course, it is understood that the marshal of the court can not lease a building without the knowledge and consent of the judge.

Mr. TAVENNER. Do you know of your own knowledge that the judge knew about this?

Mr. CURTIS. In regard to the building, it is the natural assumption which must necessarily follow as a logical consequence that he would not leave one building and go to another. This building, No. 12 Whangpoo Road, was moved into August, 1911, from No. 36 Whangpoo Road. The judge knew that they moved the court from

one building to another, and therefore he must have known that the rent was being paid.

Mr. TAVENNER. The particular building I had reference to is the one where you say the Government pays \$200 for the building, but the man who owned the building only received \$150.

Mr. CURTIS. Yes, sir.

Mr. TAVENNER. Is not that the building which you have just referred to as being the court?

Mr. CURTIS. Yes, sir; part of that building is used for residential purposes. Furthermore, I would call your attention to the statement showing that they do not have authority to grant leave of absence to the judge of the United States court. That is the authority given to the Attorney General. The law provides for that. The court has simply drifted into the State Department; nobody has taken hold of it. It came into being by an act of legislation which was enacted hurriedly the last days of the session and which I was instrumental in having enacted. The very last day of the session Senator Spooner made the report as the sole member of the subcommittee and rushed it through.

The CHAIRMAN. Without deciding what to do, I shall ask the Auditor for the State and Other Departments to be here to-morrow morning, and also the Chief of the Consular Bureau.

Mr. CURTIS. Mr. Chairman, I would suggest that also ask Mr. Latham, who has charge of estates in the Auditor's Office, to be present.

Mr. FERGUSON. Charge of estates of deceased American citizens in China?

Mr. CURTIS. Yes, sir. He has had charge of them for 30 or 40 years.

The CHAIRMAN. What are his initials?

Mr. CURTIS. I think, I. O. Latham. I would also suggest that Mr. Morrison, the former financial Chief of the Department of State during the years that it is alleged these things occurred, be requested to be present.

The CHAIRMAN. We can not hear them all in one day.

(Thereupon the committee adjourned to meet on Saturday, September 20, 1913, at 10.30 o'clock a. m.)

COMMITTEE ON EXPENDITURES IN
THE DEPARTMENT OF JUSTICE,
HOUSE OF REPRESENTATIVES,
Saturday, September 20, 1913.

The committee this day met, Hon. Robert F. Broussard (chairman) presiding.

STATEMENT OF MR. A. O. LATHAM.

The CHAIRMAN. What is your position?

Mr. LATHAM. Clerk.

The CHAIRMAN. In what office?

Mr. LATHAM. Office of the Auditor for the State and Other Departments.

The CHAIRMAN. Mr. Latham, the committee is anxious to get some information relative to the vouchers of Judge Thayer, United States judge at Shanghai, China—the vouchers for his expenses while traveling as judge in his official capacity and the vouchers for the rent of the building wherein the court is held. Have you that information at hand?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Will you please tell, if you know, just when Judge Thayer took charge of the office he now holds?

Mr. LATHAM. I think he took charge January 1, 1909.

The CHAIRMAN. Were you then occupying the office you do now in the auditor's office?

Mr. LATHAM. I was.

The CHAIRMAN. So that you are familiar with all of the transactions with regard to the vouchers and their approval?

Mr. LATHAM. I think I am.

The CHAIRMAN. Are his vouchers monthly vouchers or quarterly vouchers?

Mr. LATHAM. His salary is paid monthly by the disbursing officer, by the special disbursing officer, but the accounts are rendered quarterly.

The CHAIRMAN. Well, now, you examine his accounts quarterly. Please state to the committee how that is done so that your office may have a check upon the payment by the disbursing officer of the judge's salary.

Mr. LATHAM. Our office requires accounts to be rendered of salaried officers and also of the vouchers paid by the special disbursing officer. We do that for the reason that they do not always receive their salary in the same way; sometimes they are on leave of absence and then they draw directly on the Treasury; but when they are there they draw from the special disbursing officer.

The CHAIRMAN. Your office approves these vouchers for a quarter and the disbursing officer then pays that quarter monthly?

Mr. LATHAM. The disbursing officer renders his accounts quarterly, but his vouchers for salaries are generally monthly because, I sup-

pose, those officers want their salaries each month; but he renders an account at the end of the quarter, including the three vouchers for the salary of the officer.

The CHAIRMAN. Then, as I understand it, the disbursing officer pays a quarter monthly and when the three months are up he then files with you the vouchers of the judge together with the abstract and the receipt which he has received for the money?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. If your office disapproves of the payment, what is the Government's method of covering this money into the Treasury; that is, should a particular item be disapproved?

Mr. LATHAM. It is suspended; the item is suspended in the special disbursing officer's account.

The CHAIRMAN. You hold him accountable for it?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. And he must go back to the judge, then?

Mr. LATHAM. Yes, sir; he must go back to the officer and correct the accounts with him.

The CHAIRMAN. Who is the disbursing officer to whom you refer in this instance?

Mr. LATHAM. D. A. Wilson, jr., is the special disbursing officer, and he is also the marshal for the court.

The CHAIRMAN. At Shanghai?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Now, the accusation is brought against Judge Thayer that at one time, for a period of more than five months, he was absent from China and residing temporarily in Japan, and the claim is made that he ought not to have received his salary during that period of time. Is there anything appearing on the vouchers that would indicate to you whether or not that is the fact?

Mr. LATHAM. No, sir; there is not anything required from him as to whether he is present at his post or absent.

The CHAIRMAN. Your office does not investigate that matter?

Mr. LATHAM. That is a matter that we take the Department of State's approval for. The presumption is that they know, as an administrative department, where the officer is, and whether or not he is in the line of duty, and if the State Department approves Judge Thayer's accounts, or any of these accounts, we take that as final in regard to such questions.

The CHAIRMAN. Then the disbursing officer makes his report to the State Department?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. And that comes to you through that channel?

Mr. LATHAM. The accounts come to the auditor's office through the State Department with its approval or nonapproval.

The CHAIRMAN. What is the name of the official of the department through whom these accounts reach your office?

Mr. LATHAM. In the State Department?

The CHAIRMAN. Yes.

Mr. LATHAM. The Bureau of Accounts and the disbursing clerk.

The CHAIRMAN. Do you know the name of the chief of that bureau?

Mr. LATHAM. Yes, sir; his name is McNeir.

Mr. CURTIS. What was the name of the disbursing officer at the time these accounts were rendered?

The CHAIRMAN. I want to get information from this officer as to the method of procedure between the State Department and the auditor's office.

Mr. CURTIS. I understood your question to go to the disbursing officer at the time these particular accounts were rendered to the State Department.

The CHAIRMAN. Well, the particular office in the State Department that receives these accounts and transmits them to the Auditor for the State Department.

Mr. CURTIS. Was not Mr. Morrison disbursing officer at that time?

Mr. LATHAM. Mr. Morrison was——

The CHAIRMAN. I am trying to get that information with a view of securing the presence of the officer before the committee; of course, if he has come in recently there is some one in his office who can make the explanation.

Mr. LATHAM. Mr. Morrison was the chief, and he is still in the office.

The CHAIRMAN. Will you give us a sample of these vouchers—just any one of them—so far as Judge Thayer's salary is concerned—just the wording of it? I presume they are all worded alike.

Mr. LATHAM. Yes, sir; I think they are; but unfortunately we have not blanks prepared yet. I prepared blanks and submitted them to the Department of State and the Comptroller of the Treasury, but they have not yet been adopted and sent out, and we have to depend upon the blanks which they furnish us. The form that they put them in has not been prescribed by our office, but we take the form in which they have been sent in. I will show you one of them [producing voucher]. That is approved on the back, you will notice.

The Chairman. I think I had better read this into the record:

ACCOUNT.

The United States in account with Rufus H. Thayer, judge of the United States court for China, under the appropriation "Salaries and expenses, United States court for China," 1910.

For month ending April 30, 1910.

Debtor.

To salary from April 1 to 30, 1910-----	\$666. 67
	<hr/> 666. 67

Creditor.

By draft No. 7, April 27, 1910 (voucher No. 7) :	
Amount -----	\$717. 18
Loss by exchange -----	50. 51
	<hr/> 666. 67
	<hr/> 666. 67

RUFUS H. THAYER,

Judge of the United States Court for China.

SHANGHAI, CHINA, *Deeember 15, 1910.*

(Endorsed:) Rufus H. Thayer, salary as judge. April 1-30, 1910. U. S. Court for China. Department of State. Approved: Chandler Hale, Third Assistant Secretary. M. Received Jan. 19, 1911. Diplomatic and Consular Division, 7171.

All of these vouchers are in that shape?

Mr. LATHAM. No, sir; they are not all in that form. That was made out for an account which he drew on the Treasury Department, I suppose, because there is a loss by exchange included. I suppose he did not get his money there, from the special disbursing officer, but drew on the Treasury, and when they draw on the Treasury there is necessarily a loss, or a gain, by exchange. I will show you another one.

The CHAIRMAN. Who loses this \$50.51?

Mr. LATHAM. The United States.

The CHAIRMAN. In other words, his salary was payable to him where he was and whatever loss there was on the exchange had to be met out of the Treasury?

Mr. LATHAM. Yes, sir. I will show you another one of those accounts which will probably illustrate better the general run of them. Sometimes he has been on leave in this country, and he had to render accounts here, and he drew his money right out of the Treasury. Here is an account that represents the amount drawn on the special disbursing officer [producing voucher].

The CHAIRMAN. I will read this into the record:

ACCOUNT CURRENT.

The United States in account with Rufus H. Thayer, judge of the United States Court for China. Under the appropriation "Salaries and expenses, United States Court for China," 1911-12.

For quarter ended June 30, 1912.

Debtor.

To salary from Apr. 1, 1912, to June 30, 1912-----	\$2,000.00
	<hr/>
	2,000.00

Creditor.

By compradore orders:

Compradore order No. 273, Apr. 30, 1912—

Amount -----	666.66
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Voucher No. 892.

Compradore order No. 280, May 31, 1912—

Amount -----	666.67
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Voucher No. 916.

Compradore order No. 282, June 30, 1912—

Amount -----	666.67
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Voucher No. 929.

	<hr/>
	2,000.00

The above vouchers are sent in disbursing officer account for the quarter ended June 30, 1912.

RUFUS H. THAYER,
Judge of the United States Court for China.

SHANGHAI, CHINA, *July 1, 1912.*

(Indorsed:) Law 11275. Not for ledger nor record. Department of State. Approved: Chandler Hale, Third Assistant Secretary. M.

This is approved in the same way as the other one. The judge approves all of the accounts for his own salary?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Does he approve the accounts for the district attorney there?

Mr. LATHAM. Yes, sir; he approves all the accounts of the disbursing officer, which includes all their salaries.

Mr. CURTIS. Does he approve the marshal's accounts?

Mr. LATHAM. Yes, sir.

Mr. BAILEY. Does that include expenses for rent?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Both of these vouchers are dated at Shanghai. Do you know whether all of the vouchers that you have are dated at Shanghai or whether some of them are dated elsewhere?

Mr. LATHAM. Well, that I am not able to say.

The CHAIRMAN. We would have to go through them to ascertain that fact?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Is there very much work involved in that?

Mr. LATHAM. That is, to go through them?

The CHAIRMAN. Yes; in order to ascertain that fact.

Mr. LATHAM. If you would go through all of them it would be considerable work, but you might take up one or two accounts.

The CHAIRMAN. I was going to state that it might be possible to get that statement for us from your office and send it to us without going over it here. Could you have that done in your office?

Mr. LATHAM. Yes, sir. You mean you want to cover the whole period of his service?

The CHAIRMAN. Yes. All we would want to get in this statement would be the vouchers signed at such and such a place, so as to show just where they were drawn.

Mr. LATHAM. Yes, sir.

The CHAIRMAN. There is another charge brought against Judge Thayer, that subsequent to this absence of five or more months he was absent for ten months, and we want to get information from these vouchers to show whether the vouchers were dated as though he were attending to the business of his office when in fact he was in Europe in one instance or in Japan in another instance, etc.

Mr. LATHAM. Well, the only way you could get that would be for us to make a statement. If you know the period during which it is claimed he was absent, then we could tell you how the vouchers were drawn.

The CHAIRMAN. We have the period; it is recited in this testimony, but it is not at hand. However, it is immaterial for the purpose of your examination now, because we could furnish those dates to you.

Mr. LATHAM. Yes, sir.

The CHAIRMAN. And then those particular vouchers could be examined.

Mr. LATHAM. Well, I can furnish you the record for the whole of his term.

The CHAIRMAN. Well, perhaps that would be better, to have information as to the whole of his term.

Mr. LATHAM. That is, his receipts?

The CHAIRMAN. Yes.

Mr. LATHAM. The dates of them and the places. You do not want a copy of the receipts?

The CHAIRMAN. No; we have a sample of what they are and that will be in the record; there is no use of copying all of them, but merely the places where these vouchers were dated.

Mr. LATHAM. For such and such quarters and for such and such months?

The CHAIRMAN. Yes.

Mr. LATHAM. All right.

Mr. TAVENNER. Mr. Curtis informs me that you sent that identical information to the Printing Office yesterday to be printed, the very thing you have asked for. He tells me that that has been sent to the Printing Office, and that it is under the seal of the Secretary of the Treasury and is certified.

The CHAIRMAN. You mean one of the exhibits?

Mr. TAVENNER. All of the exhibits to which these charges relate.

The CHAIRMAN. Then it may not be necessary to have it done over again.

Mr. CURTIS. You recall certifying a lot of documents for Senator Hughes, do you not?

Mr. LATHAM. I do not recall now.

Mr. CURTIS. And that you made a copy of the vouchers for the salary of Judge Thayer for certain months?

Mr. LATHAM. I do not remember now.

Mr. TAVENNER. You heard the character of the information outlined by the chairman. Does the information sent to the Printing Office include everything that he mentioned and desires?

Mr. CURTIS. Yes; certificate by certificate and voucher by voucher, all signed and sealed.

Mr. LATHAM. Probably they would not show just what you are trying to get at, because he might be away from his post and not draw his money until he comes back to Shanghai, and he might draw the receipt at Shanghai.

The CHAIRMAN. I see. It appears that we have a lot of testimony in course of printing at the Government Printing Office, and therefore I do not know whether we want this testimony or not. If the testimony is already in the record it would be useless to put your office to the trouble of doing the work over again. We will wait until we get the printed report, and if that evidence is not in it, then I shall write you and ask you to comply with this request; otherwise it will be unnecessary for you to do the work.

Mr. COLDREN. I would like to ask the witness whether or not his office pays any attention, on a voucher for the salary of the judge of the United States Court for China, to the place where the voucher purports to have been drawn or dated?

Mr. LATHAM. No, sir. If it comes to our office approved by the Department of State, we take it for granted that they, as an administrative department, know that it is correct.

Mr. COLDREN. If such a voucher for the salary of this judge should come to your office, dated London, England, or dated at some place in Japan, for salary for a particular month, would you question the payment of that voucher?

Mr. LATHAM. Not at all. There is nothing in the law to require him to be at his post of duty continuously, nothing in regard to

leaves of absence, or anything of that kind. As long as he holds the position and draws his money under the approval of the administrative officer, we pay it on his vouchers.

The CHAIRMAN. You pay it so long as there is a fund available for that purpose?

Mr. LATHAM. Yes, sir. Of course, we do not exceed any fund. There is enough appropriated to pay his salary, and he generally draws it all.

Mr. TAVENNER. Does not the law require that if he is absent that he should file certificates of his absence?

Mr. LATHAM. No, sir.

Mr. TAVENNER. In the Dockery Act it says:

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent.

Mr. LATHAM. This court is established under a different law, which does not embody any requirements of that kind.

The CHAIRMAN. If this law applied, what would your office have to do with the enforcement of it?

Mr. LATHAM. If that law applied to this court we would suspend his salary until he gave us certificates or satisfactory evidence that he was present.

The CHAIRMAN. Then that is a matter that your office determines?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. You construe the law as applied to a particular judge, whose accounts come to your department?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. And your office holds that this judge does not come within the purview of this act?

Mr. LATHAM. Yes, sir. This court is not under the Department of Justice; it is under the Department of State, and under a very different law and regulations from the United States courts in this country.

Mr. FERGUSON. I understand you to say, then, that this judge can legally be in Japan and draw his salary away from his jurisdiction and draw for the time he is in Japan?

Mr. LATHAM. Yes, sir.

Mr. FERGUSON. He can lawfully do that under the statute as you construe it?

Mr. LATHAM. That is the way our office understands it.

Mr. CRAMTON. Why is it that if he has filed a leave of absence that then the vouchers take a different course and go to different officials?

Mr. LATHAM. I do not understand your question.

Mr. CRAMTON. I understood you to say that if a judge was on leave of absence then a different course was followed.

Mr. LATHAM. No, sir; there is no different course. We have the State Department to approve each of these accounts, whether he is absent or present, and we honor his vouchers for salary when the State Department has approved his accounts and the disbursing officer's accounts. We have no regulations governing the court; we go by the law as passed by Congress. There have been no regulations established in regard to absences, no forms yet prescribed,

and we have never considered that the question of absence or presence affected the account in any way if properly approved.

Mr. TAVENNER. Has any court ever held that the Dockery Act does not refer to this particular court in China?

Mr. LATHAM. Not that I know of.

Mr. TAVENNER. Upon what do you base your opinion that this court in China is not under this law? It seems to me that it is very clear. This act provides that "All other accounts relating to the business of the Department of Justice, or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney General and examined under his supervision." This court is not a consular court, is it?

Mr. LATHAM. No, sir.

Mr. TAVENNER. It seems to me that it would come under this act here. This act reads, "The courts of the United States other than consular courts," and if Judge Thayer is under this act, then it would be necessary for him to file certificates showing absence from his jurisdiction.

Mr. LATHAM. Yes, sir.

Mr. TAVENNER. Do other judges file certificates of that character?

Mr. LATHAM. I do not know, sir. I am not engaged in the Department of Justice, and the United States courts in this country come under the Department of Justice. This court comes under the State Department, and the State Department is supposed to regulate this court. The Department of Justice does not have anything to do with it.

Mr. TAVENNER. Is there any law that places this judge under the jurisdiction of the State Department?

Mr. LATHAM. I do not know that there is. There was a little trouble at first to know just where the jurisdiction was that had charge of this court. Some question came up in regard to this—I believe some remittance was made of fees or a remittance from some estate, or something of that kind, and the Department of Justice would not receive it. It was submitted to the officer in the Treasury who decides these points, and he would not take any action in it, and it was sent to the Auditor for the State Department, and I gave the directions as to how the money was to be deposited, and took the responsibility of settling the accounts without any authority from any place. The Department of Justice would not receive the accounts, and disclaimed any jurisdiction over them, and the State Department, of course, had to take them. When the first accounts were sent in, they bundled them up and sent them over to the Auditor and said they could not make anything out of them, and I had to take them and straighten them out and settle them and require proper returns to be made of the fees, and do everything that was necessary in connection with them. They have been running that way ever since, and nobody has questioned it.

The CHAIRMAN. Is that true in regard to the insular courts in Hawaii and Porto Rico? Is it true that the Department of Justice has taken no jurisdiction over those courts in the sense you have just mentioned, in referring to its lack of jurisdiction over the court at Shanghai?

Mr. LATHAM. I am not acquainted with those courts.

The CHAIRMAN. Do you audit the accounts of the judge in Porto Rico?

Mr. LATHAM. No, sir.

The CHAIRMAN. I understand that that court is under the War Department.

Mr. LATHAM. That is under the War Department—the insular court.

The CHAIRMAN. It seems to me that Congress ought to take some action to place these various courts and the officials of these courts under the proper officer.

Mr. TAVENNER. I believe it is stated right here. The main point here is whether this court is a consular court, because the Dockery Act refers specifically to all courts except consular courts. I believe it would be a good thing to read this particular paragraph into the record. Section 13 of the Dockery Act reads as follows:

Before transmission to the Department of the Treasury the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent.

The CHAIRMAN. My information is that the judges of the courts having insular jurisdiction are not paid in that way, despite the fact that this law exists. They are paid from the War Department. The Attorney General claims that the War Department has jurisdiction over these courts in Porto Rico, Hawaii, and in the Philippines, and these accounts all go to the War Department. They ought to go to the Department of Justice, and the accounts of the courts ought to be audited by the Auditor for the State and other Departments. You say they are not audited by him?

Mr. LATHAM. No, sir; they must be audited by the Auditor for the War Department.

Mr. COLDREN. Can you tell us what can be judged as to the view of Congress concerning the position of this court relative to its accounts from the appropriation bills passed since the passage of the act establishing that court for China? In what appropriation bill does the appropriation for this court appear?

Mr. LATHAM. In the diplomatic bill.

Mr. COLDREN. In the diplomatic and consular appropriation bill?

Mr. LATHAM. Yes, sir.

Mr. COLDREN. Is that the same bill which provides for the courts that come under the Department of Justice?

Mr. LATHAM. Not at all. It is the only court provided for in that bill, except the consular courts.

The CHAIRMAN. It is the only court of that character we have anywhere?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. And it was brought about by virtue of complaints concerning the consular court at that point.

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Congress sought to change it and make it a real court.

Mr. LATHAM. That is the way I understand it.

The CHAIRMAN. And instead of having a civilian or layman presiding over this court Congress thought it would be better to create a court, just as courts in this country are created, so that American citizens could go into a regularly constituted court.

Mr. COLDREN. And the expenses of that court, including the salaries of the judge, marshal, district attorney, and clerks, and the rentals and traveling expenses—are they all paid from this diplomatic appropriation bill?

Mr. LATHAM. They are paid from the appropriation for the United States Court in China, which appropriation is made in the diplomatic bill. It is embodied in the diplomatic bill.

The CHAIRMAN. The vouchers show the amounts and on what account they are paid?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. The vouchers I saw had a provision in quotation showing that. Do you audit the traveling expenses of Judge Thayer?

Mr. LATHAM. Yes, sir.

The CHAIRMAN. Have you the dates there, Mr. Curtis, when you claim that Judge Thayer stopped at Hongkong?

Mr. CURTIS. Yes, sir; the 31st of March, 1910. He was down there on the 31st.

The CHAIRMAN. I will read you the specific charge, Mr. Latham, and then we want to find the voucher for this item and see what appears on it. Mr. Curtis says here:

The vouchers show that \$74.94 was the actual amount paid for expenses during the time he remained at Hongkong when he should have been in Shanghai, Hongkong being a British colony, and Judge Thayer having absolutely no duties to perform there, his only reason for stopping at Hongkong being to transship from the steamer from Shanghai to Canton, and on his return on the boat on which he came from Canton transship to Shanghai.

What is the date of that?

Mr. CURTIS. It is from the 4th of March, 1910, to the 29th of March, 1910.

The CHAIRMAN. We want the vouchers then for the month of March. These vouchers are made quarterly, as I understand it, charging expenses?

Mr. LATHAM. Yes, sir.

Mr. CURTIS. May I read something to you on the subject of the jurisdiction of this committee over this court?

The CHAIRMAN. The jurisdiction of this committee is recited in the Rules of the House, and we put a statement of that in the first hearing. It is rule 42, and it was put in at the beginning of the hearing in order that there might be no misunderstanding of it. That rule appears on the first page of the hearings. We have a right to investigate everything pertaining to the expenditure of money by the Department of Justice. Now, while this court ought, in my judgment, to be under the jurisdiction of the Department of Justice, the facts show that it is not. Congress has acquiesced in the ruling of the auditor by making appropriations for the support of this court out-

side of the appropriation for the Department of Justice--that is, Congress has placed the appropriation for the support of this court in the diplomatic and consular appropriation bill.

Mr. CURTIS. Mr. Chairman, in this connection, I would like to say that the title of this bill or act creating the United States Court for China shows that it is an act creating a United States Court for China and it describes the jurisdiction thereof. The act creates a court of the United States, as its title specifically states. It is a court of record, with a seal prescribed by the said act, with a judge, district attorney, clerk and marshal, all appointed by the President, by and with the advice and consent of the Senate. The said judge is not required to give a bond for the faithful performance of the duties of his office, nor is he held liable for negligence and misconduct as a public officer when performing judicial duties, as a consul in China is when performing judicial duties. (See sec. 4110, Rev. Stat., and also sec. 1697, Rev. Stat.)

The United States consular courts in China are not courts of record, in that they have no seal as a court, using the seal of the consulate; the judges of these courts give bonds for the faithful performance of the duties of their office, and are made liable when acting judicially for all negligence and misconduct. (See secs. 4110 and 1697, Rev. Stat.) Further, the act creating the United States Court for China differentiates between it and the consular court, and defines the jurisdiction of each. Hence the United States Court for China, appeals from which lie to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, and thence to the United States Supreme Court, is one of the courts of the United States, and comes within the provisions of the Dockery Act, approved July 31, 1894 (28 Stat. L., 210). Section 13 of that act has just been read. That act provides that the accounts required of the judge shall be paid by the Department of Justice, and it requires the making of certificates as to absence or nonabsence.

The CHAIRMAN. It is useless for this committee to look into that question. The act has been construed by a department, and it has been held that the accounts of this court should go to the State Department and not to the Department of Justice. The Attorney General has refused to take charge of this court, and has stated that it belongs to the Department of State; and Congress has uniformly recognized the position taken by the Attorney General and the ruling of the Auditor for the State and Other Departments by making the appropriations for the support of this court not to the Department of Justice, but to the Department of State. That being true, I do not think we can go any further with it, and we should refer this matter, in so far as it relates to expenditures, to the Committee on Expenditures in the State Department.

Mr. CRAMTON. The Department of Justice should take jurisdiction, but, as a matter of fact, they have not done so. They have not had the money to expend on account of this court, and therefore there is no expenditure by the Department of Justice involved here.

The CHAIRMAN. There has been no expenditure on this account by the Department of Justice at all. The matter having come to us in this shape, all that we can do with it is to send a copy of the hearings we have had to the Committee on Expenditures in the State Department and call their attention to it and let them deal with it as

they deem proper. I do not think that we have any jurisdiction over the matter, because it does not involve any expenditure by the Department of Justice, and that is all we are authorized to investigate. This construction of the law by the Attorney General may be wrong, but it is the law all the same.

Mr. FERGUSON. As a matter of fact, they have not expended anything and we have nothing to investigate.

Mr. CURTIS. In the act creating the court nothing was said as to what jurisdiction it should come under. The act simply creates it as a court of the United States. I spoke to the solicitor at that time about it, and told him that we had no books, and that he should have a library. I think he made a recommendation to buy us some books. However that was, we got some books for the library. Since then the appropriation for the support of the court has drifted into the State Department in some way.

The CHAIRMAN. This committee was organized by Congress for the purpose of investigating expenditures in the Department of Justice. In this case it appears that there was no expenditure made by the Department of Justice. If there were no committee with jurisdiction over this matter, we might say that, having taken up the subject for investigation, we might proceed with it, but there is a committee with jurisdiction over this matter, and this committee is not ready to encroach upon the jurisdiction of that other committee. Had these facts been known from the beginning, our consideration of the matter would have been very short. There is no expenditure by the Department of Justice involved in any of these transactions, and this committee has no authority to investigate the expenditures of any other department.

Mr. CRAMTON. It seems to me that the most we can do, under the circumstances, is to consider the advisability of recommending legislation to straighten out this tangle.

The CHAIRMAN. Of course, we will have to do that as individual members, because that belongs to another committee.

Mr. BAILEY. I move, Mr. Chairman, that the printed proceedings of this hearing be transmitted by the chairman of this committee to the Committee on Expenditures in the Department of State in order that they may act as they may deem proper with regard to these charges.

The CHAIRMAN. The motion is made that the printed proceedings of this hearing be transmitted by the chairman of this committee to the Committee on Expenditures in the Department of State, in order that they may act as they may deem proper with regard to these charges.

(The above motion being put by the chairman, the same was carried unanimously.)

Mr. LATHAM. This [producing an account] is Judge Thayer's account in which he made that charge at Hongkong. It was suspended by our office for explanation, and that [indicating] is his explanation. It was afterwards allowed on his explanation of why he was detained in Hongkong.

Mr. COLDREN. I should have been very glad to have presented Judge Thayer's very full and frank letter in explanation of that trip to Hongkong, and if the committee has the time, I would like to read it.

The CHAIRMAN. It would have been fair to put his explanation in the record, but inasmuch as we have referred this printed matter to the other committee, I do not know——

Mr. CURTIS (interposing). I have a copy of that letter already set forth in the exhibits. A copy of that has been inserted in the record. It was furnished by the Treasury Department from the auditor's office.

The CHAIRMAN. Is it in your testimony?

Mr. CURTIS. Yes, sir.

Mr. BAILEY. Has that exhibit been ordered printed?

The CHAIRMAN. It is being printed now.

Mr. TAVENNER. Referring to those features of this case that do not come under the jurisdiction of the Committee on Expenditures in the Department of State, will they be referred to the Committee on the Judiciary?

The CHAIRMAN. Yes, sir; we adopted a resolution the other day to do that, and as soon as this matter is printed, I will send a copy of it to the chairman of that committee with a letter stating that this committee refers it to them for their consideration.

Mr. COLDREN. Mr. Chairman and gentlemen of the committee, I feel it due to Judge Thayer to ask permission of this committee, since the record of the hearing up to this point is to be transmitted to other committees of Congress for such action as they may see fit, to have the privilege of asking Mr. Curtis a few questions. I shall not prolong the matter with the few questions which I wish to ask. I do not think it will take me over 10 or 15 minutes, but I think it is important and in justice to Judge Thayer that those things which I propose to ask may be brought out and transmitted as a part of these hearings—Mr. Curtis's answers to those questions—for the consideration of the other committees.

The CHAIRMAN. I have no objection, so far as I am concerned. Mr. Curtis will probably have more to say about that. We have already decided that we have no jurisdiction.

Mr. CURTIS. If this committee has no jurisdiction, then I will answer your questions before the Committee on the Judiciary and answer them under oath.

Mr. COLDREN. The point I make is this, that the present record, which is ex parte, is to be transmitted to other committees to determine whether or not it furnishes a sufficient basis for an investigation, and in a formal way, in a way it has been made public and published in the newspapers and all that. I have knowledge of some facts which in simple justice to Judge Thayer——

Mr. CRAMTON. The full case has not been put in on the other side as against Mr. Thayer and Mr. Curtis may ask us to listen to some other matters when we have other matters to attend to.

Mr. COLDREN. I do not like to take up much time of the committee, and up to this time I have occupied scarcely any time, but I think, in turning over this record to other committees for their consideration——

Mr. CRAMTON (interposing). You yourself do not represent Judge Thayer officially?

Mr. COLDREN. Only by the courtesy of the committee. I am a friend of Judge Thayer, and partly by reason of my former part-

nership with him and my intimate relations with him I thought that I ought to appear here and that he would expect me to appear here and ask the courtesy of the committee to appear in his behalf.

Mr. CRAMTON. It has been transferred to other committees.

Mr. CURTIS. If I had seen fit to give this to the newspapers, I could have gone to them before.

Mr. FERGUSON. My motion is, first, that you do not appear here except at the courtesy of the committee and not at its request. In the second place, we have done absolutely nothing; we have met at the request of Mr. Curtis, and he has submitted what he has in absolutely good faith, and we have decided that we have not jurisdiction to go further.

The CHAIRMAN. We stopped without even securing an answer to the last question. We have no right to investigate matters over which we have no jurisdiction.

Mr. COLDREN. If there had been no publication I would be delighted to go out of this committee room without asking any questions, but the difficulty is this: Suppose this matter is referred to other committees, and suppose there is an adjournment of Congress shortly, at any rate, that the committee does not take it up before the adjournment, the matter will lie with the printed charges against Judge Thayer, with insinuations of various kinds, and this committee does not give the source from which this has sprung. I want to put in the record a few questions to show the animus and the source and the probable——

Mr. FERGUSON (interposing). That will lead to a personal quarrel with Mr. Curtis, and I am against it.

Mr. COLDREN. Very well. Is that fair to Judge Thayer?

Mr. FERGUSON. I do not care whether it is or not. Judge Thayer is entitled to a full hearing before other committees, and he will have the benefit of what Mr. Curtis has said.

The CHAIRMAN. We can not proceed with an investigation when this committee has decided that it has not jurisdiction. As a Member of Congress, under my oath, I would feel as though, even if this committee had not transmitted the testimony, that it having been taken at the public expense, it should be transmitted to some other committee which has jurisdiction. I feel that I should do that on my own responsibility.

Mr. COLDREN. I fully agree with that; under the circumstances there is nothing else to do; but I feel that it is only simple justice to the judge that a few matters might be brought out here to indicate the animus, and I may say further, the credibility of the witness who has appeared here.

The CHAIRMAN. He has not testified under oath, so his credibility is not involved. We tried to ascertain whether there was a prima facie case to go into that matter, and when we came to the question of jurisdiction we found that it did not lie with this committee, and so we decided to turn the prima facie case over to the other committees.

Mr. CURTIS. All of the specifications are supported by documentary evidence under the seal of the Treasury Department and the State Department.

(Thereupon the committee adjourned.)

CHARGES OF HIGH CRIMES AND MISDEMEANORS MADE
AGAINST RUFUS H. THAYER, JUDGE OF THE
UNITED STATES COURT FOR CHINA
AT SHANGHAI, CHINA

CHARGES AGAINST RUFUS H. THAYER.

SPECIFICATION No. 1.

That the said Rufus H. Thayer, at Shanghai, in the Republic of China, heretofore, to wit, between the 23d day of June, 1909, and the 21st day of September, 1910 (23 June, 1909, to 20 Sept., 1909, and 23 June, 1910, to 21 Sept., 1910), being then and there judge of the United States court for China, in the Republic of China, a court of special limited jurisdiction, created by act of Congress of June 30, 1906 (34 Stat. L., 814), limited by treaty to jurisdiction over citizens of the United States in China, said judge being appointed for 10 years by the President, by and with the advice and consent of the Senate, and removable by the President for cause, did, knowingly, willfully, and unlawfully, then and there, between the said 23d day of June, 1909, and the 21st day of September, 1910, make and cause to be made, present and cause to be presented, certain false, fictitious, and fraudulent accounts, vouchers, and claims, to the Auditor for the State and Other Departments, and to the Treasurer of the United States, at Washington, D. C., for approval and payment, the said false, fictitious, and fraudulent accounts, vouchers, and claims, so made and presented, were in respect to salary as said judge of said court, for alleged services rendered, but which were not rendered and could not be rendered for the reason that he was away from his post of duty in China for nearly 6 months, to wit, 5 months and 25 days, without leave of absence granted him, and without the knowledge of the Department of State, or of the Attorney General, or of the President; that the said false, fictitious, and fraudulent accounts, vouchers, and claims, inter alia bear false certificates that the several sums of money named therein were actually due for services rendered, and purport on their face to have been signed by the said Rufus H. Thayer, at Shanghai, China, on the dates therein named, when he was on said dates, as a matter of fact, not in China, but away from China during the said 5 months and 25 days, in Rokkosan, near Kobe, in the Empire of Japan, where he had rented a bungalow for a part of the spring, summer, and fall; the said Auditor for the State and Other Departments and the said Treasurer of the United States being then and there persons and officers in the civil service of the United States, the said Rufus H. Thayer knowing said accounts, vouchers, receipts, and claims to be false, fictitious, and fraudulent; and for the purpose of obtaining and aiding to obtain the payment and approval of said false, fictitious, and fraudulent accounts, vouchers, receipts, and claims, he, the said Rufus H. Thayer did, between the said 23d day of June, 1909, and the 21st day of September, 1910, then and there make, use, and cause to be made

and used certain false accounts, vouchers, receipts, and claims amounting to the sum, to wit, of \$5,333.10, lawful money of the United States, in words and figures set forth on pages 7, 8, 9, 10, 12, 13, 14, and 15 of Exhibit No. 1, hereto attached and made part hereof.

He, the said Rufus H. Thayer, then and there knowing the said accounts, vouchers, receipts, and claims to contain fraudulent and fictitious entries, with fraudulent design then and there to cheat and defraud the Government of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

NOTES ON THE LAW AND FACTS UNDER SPECIFICATION NO. 1.

LAW.—The above specification is drawn under section 35 of the Criminal Code of the United States, which was, before the codification of the criminal laws, section 5438 of the Revised Statutes.

The specification is framed practically on the indictments set forth in the case of *Ex parte Shaffenburg* (4 Dillon, 271; Federal Cases No. 12696, vol. 21, p. 1144), *U. S. v. Ingraham* (155 U. S., 434), and of *U. S. v. Dimmick* (116 Fed. Rep., 825). Shaffenburg was a marshal of the United States for the district of Colorado, who made fraudulent claims for alleged services rendered. He was indicted, convicted, and sentenced to imprisonment for the term of two years in the penitentiary of the State of Kansas. This case was tried before Circuit Justice Miller, and Circuit Judge Dillon who, in delivering the judgment of the court, said:

That if a marshal of the United States for a given district shall make out a false and fraudulent bill against the United States for official services or expenses, and present the same to the court for approval, and, after having secured that, shall forward the same to the Treasury Department at Washington for payment, or otherwise cause the same to be there presented for this purpose, this is the making in such district of a false and fraudulent bill, within the meaning and purpose of the statute.

Such has been the construction which has heretofore been put upon this useful and necessary statute in the courts in this circuit, and elsewhere, so far as we know.

The statute distinguishes between the making and the presenting of a fraudulent account or bill. It makes each a distinct offense. It may be that the offense of presenting a false bill or account to the Treasury Department in Washington can only be prosecuted in the courts of the District of Columbia; but the offense of making a false bill or account may be prosecuted in the judicial district in which the fraudulent claim is made.

What constitutes or consummates the making of a false claim within the meaning of the statute may be difficult to define so as to embrace within the definition all cases that might arise.

The said Rufus H. Thayer, being judge of the United States court for China, could not be tried in China, for the reason there is no other judge or court to try him. But he could be tried in the District of Columbia for the reason that the said false claims and vouchers were presented there for payment and approval.

The Ingraham case was tried in 1891 before Judge Carpenter in the Circuit Court of the United States for the District of Rhode Island. In this case Royal Ingraham was charged under section 5438, Revised Statutes (35 Criminal Code), in that he did knowingly, willfully, and unlawfully make and present and cause to be made and presented for payment and approval to the Third Auditor of the Treasury Department a certain claim for the sum of \$318 for payment and reimbursement to him of certain alleged expenses of the last sickness and burial

of Freeloze Ingraham, who in her lifetime had been a pensioner of the United States, which said claim was false, fraudulent, and fictitious. He was tried, convicted, and sentenced to one year's imprisonment in the Rhode Island State prison to hard labor and to pay the costs of prosecution.

The first count of the indictment against Walter N. Dimmick (116 Fed. Rep., 825) was brought under section 5438, Revised Statutes (sec. 35, Criminal Code of the United States). The said Dimmick was a clerk in the United States mint in San Francisco; as such clerk he presented for payment a bill for \$498.37 to W. K. Cole, cashier of said mint, for certain lead pipe and sheet lead which had been purchased by the United States for its mint from the Selby Smelting & Lead Co., a corporation, and which bill the United States had already paid, the said Dimmick knowing said bill had been paid, and knowing that the said Selby Smelting & Lead Co. had no other or further charge or claim against the United States or against the mint of the United States at San Francisco. Dimmick was tried, convicted, and sentenced to the penitentiary. Counsel for Dimmick contended and the prosecution conceded that the said bill does not, and never did, contain any "fraudulent or fictitious statement or entry"; therefore said counsel insisted that the case as presented by the first count is not within the statute.

The court said:

But we think there is nothing in this position of counsel for the plaintiff in error. The character of the claim—that is to say, whether true, genuine, and honest, or false, fictitious, and fraudulent—must be determined in view of all of the facts and circumstances attending it. If it be originally forged, or otherwise fraudulently concocted, its presentation for payment with knowledge of the facts must necessarily be fictitious and fraudulent. Every whit as much so is a similar demand based upon a claim originally valid, but which the party presenting the claim knows has theretofore been paid, and is no longer a subsisting, honest, and just demand, or which he knows he is wholly unauthorized to present and demand or receive any money on. (Dimmick v. U. S., 116 Fed. Rep., 825, p. 828.)

It is respectfully submitted that the absence of the said Rufus H. Thayer from China, to which country he was appointed as judge, without leave of absence, for over 16 months in a little over 3 years, drawing his salary in Japan and Europe on vouchers purporting to be dated and signed by him in Shanghai, was unlawful, and that he was "wholly unauthorized to present and demand or receive any money" on said vouchers for salary for the many months he was absent from his post of duty without rendering any services whatever to the Government of the United States.

The said Rufus H. Thayer can not be strictly said to be the experienced lawyer contemplated by the act of June 30, 1906, creating said court, as a necessary prerequisite for appointment of judge of said court, in that his course of study preparatory to admission to the bar of the District of Columbia in 1873 was a two years' course of study in one of Washington's night law schools when he was a clerk in the Treasury Department, and when the examinations for admission to the bar were comparatively easy, as compared with those of recent years. He was appointed clerk in the Treasury Department in 1871, and remained in the capacity of clerk in the Treasury Department after studying law and without practicing it until 1886, some 15½ years, when his services as clerk were terminated under President Cleveland's administration. He thereafter for several

years worked as a clerk in Washington, and finally entered upon the practice of the law. Such a course of study and experience as a Treasury Department clerk for 15 years can hardly be said to qualify a man for the office of judge of an extraterritorial court in China, before which questions of international law must be decided, as well as questions of admiralty and equity.

NOTES ON THE FACTS IN THE ABOVE SPECIFICATION.—The salary of the said Rufus H. Thayer in China is \$8,000 a year as judge, having a purchasing power in that country equal to \$25,000 in the United States.

He remained away from his said post of duty without leave of absence granted him, and without the knowledge of the Department of State, or of the Attorney General, or of the President, for nearly six months. During this time citizens of the United States, foreigners and natives, in China were without a court in which to seek redress against Americans, and Americans there were completely at the mercy of an incompetent young man, so-called judge of the inferior United States court, known as the consular court of the United States, having a jurisdiction in civil cases up to \$500 and in criminal cases of offenses the punishment of which imprisonment of 60 days might be imposed, and having jurisdiction in preliminary hearings of felonies, to commit for trial to the said United States court for China.

The said consular court was presided over by one Frank W. Hadley, vice consul of the United States, as judge; the said Hadley was not a lawyer, nor had he ever been admitted to practice law in any State or Territory of the United States, and was wholly incompetent under the rules of said consular court to practice as a lawyer in said court over which he presided as judge had he not been a judge thereof.

That citizens of the United States did suffer damage by reason of the gross ignorance and incompetency of said Frank W. Hadley as judge of said consular court, and the said Rufus H. Thayer well knew that relief could not be had by appeal from said consular court to the said United States court for China while he remained in Japan, especially by citizens committed for trial to the said United States court for China, or obtain any redress in admiralty cases or other civil cases where ships or defendants were permitted by the consular court to leave the jurisdiction of the court without giving bond.

The said Rufus H. Thayer well knew that under his oath of office and under his commission his post of duty was in China, not Japan; that it was his duty to remain there and administer justice to the best of his ability, instead of living in Japan and sending from Japan fictitious vouchers, claims, and receipts with certificates that the said sums of money therein named were actually due for services actually rendered, under date of Shanghai, China.

Thus he deceived the Auditor for the State and Other Departments and the Treasurer of the United States, leading those officers to believe that said Rufus H. Thayer was at his post of duty in China, and had actually remained there and performed the duties of judge of the United States court for China, instead of being absent from his post of duty without leave of absence granted.

That the fact that the said Rufus H. Thayer was in the Empire of Japan in the month of July, 1909, may be seen from a certified copy

of an order of the United States court for China, executed at Rokkosan, Japan, on the 28th day of July, 1909 (see Exhibit No. 9, hereto attached), and that he was there at other dates may be seen from the hotel register of the Occidental Hotel, Kobe, and steamship passenger lists there.

The records of the steamship passenger offices in Shanghai, as well as the sailing list of passengers published in the daily and weekly papers of Shanghai, will show the said Thayer's absence from China, as follows, namely:

R. H. Thayer left Shanghai, China, June 23, 1909, on board the steamship *Tenyo Maru* for Kobe, Japan (North China Herald for June 26, 1909, p. 754), and returned to Shanghai from Kobe on board the steamship *Derfflinger* on the 20th September, 1909 (North China Herald for Sept. 25, 1909, p. 750).

The said Thayer left Shanghai June 23, 1910, for Kobe, Japan, on board the steamship *Tonkin* (North China Herald for July 1, 1910, p. 60), and returned from Kobe on September 21, 1910, on board the steamship *Tourane* (North China Herald for Sept. 23, 1910, p. 752).

The said North China Herald is the official reporter of the British supreme court and British consulate at Shanghai and is on file in the Library of Congress at Washington.

Aside from being absent in Japan, as above charged, the said R. H. Thayer has made pleasure voyages and trips to Manila, Philippine Islands, and to the British colony of Hongkong, from Shanghai, China, in neither of which places did he have any business or jurisdiction, and yet he charged the Government his hotel and other private expenses. Further, as is shown in specification No. 2, he was in Europe and America. These absences without leave aggregate over 16½ months in about 3 years.

Summary of amount of salary due and paid said Thayer from the 1st day of June, 1909, to the 30th day of September, 1909, and from the 1st day of June, 1910, to the 30th day of September, 1910; the amount of salary overpaid on false salary vouchers during said periods, together with the total amount set forth on the face of the said false vouchers:

Said Thayer, outside of China without leave from June 23, 1909, to Sept. 20, 1909, 2 months and 27 days; June 23, 1910, to Sept. 21, 1910, 2 months and 28 days; total absence without leave, 1909 and 1910, 5 months and 25 days:

Salary per annum.....	\$8,000.00
Salary per month.....	666.66
Salary per day.....	22.22

5 months' salary, at \$666.66.....	3,333.30
25 days' salary, at \$22.22.....	555.50

Total salary overpaid during 1909 and 1910.....	3,888.80
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23 days in China, in June, 1909, at \$22.22.....	511.06
10 days in China, in September, 1909, at \$22.22.....	222.20
23 days in China, in June, 1910, at \$22.22.....	511.06
9 days in China, in September, 1910, at \$22.22.....	199.98

Salary due while in China, during June and September, 1909 and 1910.....	1,444.30
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Total amount on face of said false vouchers for salary during said months of 1909 and 1910.....	5,333.10
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SPECIFICATION No. 2.

That he, the said Rufus H. Thayer, did, between the 17th day of April, 1911, and the 5th day of October, 1912, knowingly, willfully, and unlawfully make, and caused to be made, present, and caused to be presented certain false, fictitious, and fraudulent accounts, vouchers, receipts, and claims (in respect to salary as judge of said court while in Europe and America 10 months and 7 days away from his post of duty in China, without leave of absence and without legal or moral reasons for absenting himself from China) to the Auditor for the State and Other Departments and to the Treasurer of the United States, at Washington, D. C., for approval and payment, the said Auditor for the State and Other Departments and the said Treasurer of the United States being then and there persons and officers in the civil service of the United States, knowing said accounts, vouchers, receipts, and claims to be false, fictitious, and fraudulent; and for the purpose of obtaining and aiding to obtain the payment and approval of said false, fictitious, and fraudulent accounts, vouchers, receipts, and claims he, the said Rufus H. Thayer, did, between said dates, then and there make, use, and cause to be made and used certain false accounts, vouchers, receipts, and claims amounting to \$8,666.40 lawful money of the United States, in words and figures set forth on pages 17, 18, 19, 20, 21, 22, 23, and 24 of Exhibit No. 1, hereto attached and made part hereof, and as set forth in the drafts drawn by the said Rufus H. Thayer on the Secretary of State, Washington, D. C., for alleged salary due said Rufus H. Thayer for the months of May, June, July, and August, 1911. (See letter Auditor for State and Other Departments, Exhibit No. 1, p. 134 thereof.)

He, the said Rufus H. Thayer, then and there knowing the said accounts, vouchers, receipts, and claims to contain fraudulent and fictitious entries, with fraudulent design then and there to cheat and defraud the Government of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

NOTES ON THE LAW AND FACTS UNDER SPECIFICATION NO. 2.

LAW.—The law notes set forth under specification No. 1 are applicable under specification No. 2.

FACTS.—The said Rufus H. Thayer was absent from his post of duty in China from the 17th day of April, 1911, to the 12th day of October, 1911—5 months and 25 days—and from May 23, 1912, to October 5, 1912—4 months and 12 days—in all, 10 months and 7 days. In respect to the 1911 absence Mr. William J. Carr, Chief of the Consular Bureau, Department of State, says that the department received a letter from the said Mr. Thayer, dated at Shanghai, the 7th of February, 1911, announcing his purpose to be absent from China from the middle of April, 1911, to the first Monday in October, 1911. (See Exhibit No. 2, p. 2, hereto annexed.) In said letter Mr. Thayer says, further, that he can be absent from his post of duty as judge of “the United States Court for China” for six months without embarrassment to the business of the court. After saying that he will leave for America about the middle of April and return on the first Monday in October, he uses these significant words, namely:

So far as I can see now, I think that it will be possible for me to do so at that time without embarrassment to the business of the court. (See p. 2, Exhibit No. 2.)

These words are significant for the reason that if there is no business for said court to transact for six months in the year is there any business to justify the existence of said court at all, at an expense of over \$30,000 a year to the Treasury of the United States? The clerk's and marshal's returns of fees in said court since its organization December 17, 1906, the date of its first session, to December 31, 1912, six years, show that, aside from alleged probate cases, which said court has unlawfully usurped, in violation of the very act creating said court, the number of cases, civil and criminal, tried does not average 12 a year, and of these a large number are cases against gamblers and prostitutes. (See pp. 38-100, Exhibit No. 1, hereto attached, being certified copies of accounts made by said court to the Auditor for the State and Other Departments.) Page after page of said accounts will be seen marked "No cases," indicating no cases heard by the court during the quarters therein named. (See pp. 42, 44, 59, Exhibit No. 1.)

Although the said Thayer knew that there was but little business to be transacted for six months out of the year by the United States court for China, he well knew that at any time during his six months' absence from China any citizen of the United States in China might be brought before the United States consular court for China for a preliminary hearing on a felony charge made by any irresponsible person, there being no grand jury recognized by said Thayer, although citizens are entitled to it, and held to answer by the judge of said consular court, who is not a lawyer, who has never studied law, and does not profess to know anything about law.

Citizens have been so held by said consular court during the deadly hot summer months in Shanghai, awaiting the pleasure of the said Thayer's return from Europe or America.

The said Thayer does not ask leave of absence for six months and leave is not granted him. He writes:

I have deemed it my duty to advise the department of my *purpose* in this regard to enable the President or the Secretary of State to communicate with me upon this subject if any communication be thought necessary.

The said Mr. Wilbur J. Carr, of the Consular Bureau, made a statement in respect of said Thayer's letter to this effect:

The Department of State did not assume to have the authority or power to grant leave of absence to a judge of a United States court.

On this subject Mr. John Bassett Moore, Acting Secretary of State, under date of Washington, April 26, 1913, writes as follows, namely:

He [Mr. Thayer] did not ask for leave, and the department having doubts as to its jurisdiction over the movements of a judge of a United States court merely acknowledged his [Mr. Thayer's] letter with the statement that "The department knows of no objection to your leaving Shanghai at the time mentioned." The records do not show the period during which he was actually absent from Shanghai. (See pp. 27 and 28, Exhibit No. 2, hereto attached.)

In respect to said Thayer's absence from his post of duty in China without leave granted him for nearly five months in 1912, the Acting Secretary of State, Mr. John Bassett Moore, under date of April 26, 1913, writes:

April 10, 1912, Judge Thayer wrote again, "I beg to advise you that I am leaving Shanghai the latter part of May for London, England, to meet Mrs. Thayer.

I may say that my absence will substantially coincide with the summer months when there is little if any business before the court and that thus litigants will suffer the minimum amount of inconvenience.

The department, on May 31, 1912, acknowledged receipt of this dispatch and added "The information contained therein has been carefully noted." (See pp. 28 and 29, Exhibit No. 2, hereto annexed.)

From the above last notice to the department of his *purpose* to leave China the latter part of May, 1912, he does not say when he will return, and that he again reiterates his former statement that there is "little if any business before the court" during the time of his five or six months' absence "and that thus litigants will suffer the minimum amount of inconvenience." (See p. 28, Exhibit No. 2, hereto annexed.)

The said Mr. Wilbur J. Carr says in respect to this last leave of Mr. Thayer, in 1912, the same that he said in respect of that of 1911, the department did not give him leave of absence.

In respect to the absence of the said Thayer from his post of duty in China during the years 1909 and 1910, the said letter of the Acting Secretary of State, Mr. J. Bassett Moore, makes no mention. The said Mr. Wilbur J. Carr, chief of the Consular Service, made a statement that the said Thayer gave no notice to the Department of State that he intended to be absent from China or had been absent therefrom, and that the said department did not know that the said Thayer was absent from his post for 5 months and 25 days between June 18, 1909, and the 3d of October, 1910.

The said Thayer was absent from his post of duty, without leave of absence granted, from the time of his appointment and opening court in March, 1909, to October, 1912, about 3 years—over 16 months—nearly $1\frac{1}{2}$ years out of 3 years.

During these 16 months of absence he made certificates that the salary was actually due him for services rendered, and dated said certificates and the receipts for salary Shanghai, China, and signed them under said dates, when he was not in China at all.

The said Thayer left Shanghai, China, for San Francisco, Cal., April 17, 1911, on board the steamer *Chiyo Maru* (North China Herald for Apr. 22, 1911, p. 252), and returned to Shanghai on October 12, 1911, on the steamer *Derfflinger*, from Yokohama, Japan (North China Herald for Nov. 14, 1911, p. 122).

In May, 1912, the said Thayer wished to leave Shanghai, and in fact the Republic of China, and go to England. He managed to get the United States to pay his personal expenses for passage about halfway to England and part of the way back to Shanghai.

He secured said expenses in this way: Just at this time it was discovered that there was a naturalized citizen of Russian descent, a Russian prostitute, one Marie Schemmel, away up in Harbin, a part of China in Asiatic Siberia, about halfway to England from said Shanghai, who was charged with vagrancy—keeping a house of ill fame—and other offenses, to be tried. Never before nor since has the said United States Court for China ever had occasion to go to Harbin.

The said Thayer left Shanghai for Dairen (Dalny) on May 13, 1912, on board the steamship *Kobe Maru* (North China Herald, May 18, 1912, p. 509), from Dalny he continued by rail to Harbin, here the said prostitute was tried by the said Thayer, and on the 23d day of May, 1912, he left Harbin for England. (See North China Herald for June 1, 1912, p. 630.)

The said Thayer returned to China from England, arriving at Tientsin in Northern China on or about October 5, 1912. (See North

China Herald for Oct. 5, 1912, p. 59.) From Tientsin the United States Government paid Thayer's expenses from said Tientsin to Shanghai, by way of Hankow, arriving at Shanghai on the 13th day of October, 1912, on board the Yangtze River steamship *Tuckvo*.

Summary of amount of salary due and paid said Thayer from the 1st day of April, 1911, to the 30th day of October, 1911, and from the 1st day of May, 1912, to the 5th day of October, 1912; the amount of salary overpaid on false salary vouchers during said periods, together with the total amount set forth on the face of the said false vouchers.

Said Thayer outside of China without leave from 17th day of Apr., 1911, to 12th day of Oct., 1911, 5 months and 25 days; 23d day of May, 1912, to 5th day of Oct., 1912, 4 months and 12 days; total absence without leave, 1911 and 1912, 10 months and 7 days:

Salary per annum.....	\$8,000.00
Salary per month.....	666.66
Salary per day.....	22.22
10 months' salary, at \$666.66.....	6,666.60
7 days' salary, at \$22.22.....	155.54
Total salary overpaid during 1911 and 1912.....	6,822.14
17 days in China in April, 1911, at \$22.22.....	377.74
18 days in China in October, 1911, at \$22.22.....	399.96
23 days in China in May, 1912, at \$22.22.....	511.06
25 days in China in October, 1912, at \$22.22.....	555.50
Salary due while in China during April and October, 1911, and during May and October, 1912.....	1,844.26
Total amount on face of said false vouchers for salary during said months of 1911 and 1912.....	8,666.40

SPECIFICATION No. 3.

That the said Rufus H. Thayer, in said Shanghai, in the Republic of China, on, to wit, the 31st day of March, 1910, did knowingly, willfully, and unlawfully make and present and cause to be made and presented for payment and approval to the Auditor for the State and Other Departments, and to the Treasurer of the United States, at Washington, D. C., the said auditor and the said Treasurer being then and there persons and officers in the civil service of the United States, a certain false, fictitious, and fraudulent account, bill, and receipt against the Government of the United States, to wit, an account, bill, and receipt for payment and reimbursement to him, said Rufus H. Thayer, of certain alleged actual and necessary personal expenses on circuit to Canton, China, from March 4 to 29, 1910, 26 days, amounting to \$194.94, lawful money of the United States, in words and figures set forth on pages 128, 129, 130, 131, and 132 of Exhibit No. 1, hereto attached and made part hereof, whereas in truth and in fact, while the law creating said United States Court for China requires said court to hold a session once a year in said Canton, there was no business requiring the presence of the court there in March, 1910, and the said court actually remained in said Canton only from the morning of the 9th to the evening of the 11th March, 1910—two and one-half days.

The said Thayer could readily have returned to Shanghai, China, by the 15th day of March, 1910, instead of which he went to the British colony of Hongkong, arriving there on the morning of the 12th

of March, 1910, where, instead of taking a ship for Shanghai, he remained over to the 26th of March, 1910, two weeks. That said Thayer had no appointment to an office in said British colony of Hongkong and had no judicial authority to exercise or judicial duties of any nature whatever to perform there, and his absence of two weeks without leave from his post of duty in Shanghai or elsewhere in China, and the charging of his personal expenses in said Hongkong from the 12th to the 26th of March, 1910, to the United States, as actual and necessary expenses, was unlawful, and said accounts, bills, and receipts setting forth same are false, fictitious, and fraudulent. The said Thayer attempts to explain his stay in Hongkong in a letter dated Shanghai, China, October 15, 1910, sent to the said Auditor for the State and Other Departments, and further seeks by said letter to obtain the payment and approval of said Hongkong expenses, payment of which had been suspended by the said auditor. Said letter is also false, fictitious, and fraudulent, a certified copy of which is set forth on pages 125, 126, and 127 of Exhibit No. 1, hereto attached and made a part hereof.

He, the said Rufus H. Thayer, then and there knowing the said account, bill, letter, and receipt to contain fraudulent and fictitious entries, with fraudulent design then and there to cheat and defraud the Government of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

NOTES ON THE LAW AND FACTS UNDER SPECIFICATION NO. 3.

LAW.—The law notes set forth under specification No. 1 are applicable under specification No. 3.

FACTS.—By the first section of the act creating said United States Court for China it was provided that a session of the court shall be held in Canton, Tientsin, and Hankow at least once annually.

During the month of March, 1910, there was not a case to be tried, nor a motion nor other business to be heard nor any business requiring the presence of the United States Court in Canton, China. Notwithstanding this fact the said Rufus H. Thayer, under the said section of act creating said court requiring at least one annual session of court to be held in Canton, left Shanghai, China, on March 4, 1910, for Canton on the palatial trans-Pacific steamship *Manchuria*, and arrived at Hongkong on the morning of the 7th of March, 1910. The said R. H. Thayer, as well as the officers of the said court, were accompanied by their wives and a party of friends, the respective ladies of the party having their native maid servants. This was a pleasure party, on a pleasure voyage, on a palatial ship, with not a bit of work for any member of the court, of which the said judge and each officer of the court was well aware.

Instead of proceeding on his way to Canton the evening of his arrival at Hongkong, which he readily could have done by taking the evening boat, he remained in Hongkong at the Hongkong Hotel until the evening of the 8th of March, 1910, when he took the evening boat for Canton, where he, with the entire party, the officers of the court, their wives, friends, and maid servants, arrived the next morning, the 9th of March, 1910.

Not having any court business, the party did the usual visitors' sight-seeing of this wonderful Chinese city, the usual shopping, and remained until the evening of the 11th of March, 1910, for this purpose, two and a half days, when the entire party, the judge and all, returned to Hongkong, where they arrived the next morning, the 12th of March, 1910.

Having complied with the law in holding a session of court at Canton at least once annually, though there was no business for the court to transact there, and not likely to be any there for the court to transact at any time, as there are not half a dozen American business firms or merchants in Canton, and having returned to Hongkong on their way back to Shanghai, on the morning of the 12th of March, 1910, it was incumbent upon the court to take the next boat back to Shanghai.

Instead of leaving Hongkong for Shanghai on the evening of Saturday, the 12th of March, 1910, having arrived from Canton about 8 o'clock a. m. of that day, or instead of leaving the next morning by the steamship *Chinhua*, a first-class schedule twin-screw steamer of the China Navigation Co. (Ltd.) Line, for Shanghai, or instead of leaving on the 14th day of March on the steamship *Polynesien* of Messageries Maritimes Line, the French mail steamer which sailed from Hongkong for Shanghai on the 14th day of March, 1910, the said Rufus H. Thayer remained in Hongkong until the 26th day of March, 1910, before beginning the continuation of his return voyage to Shanghai from Canton.

Hongkong being a British colony and the said Rufus H. Thayer as judge of the United States Court for China having no jurisdiction therein, it is respectfully submitted his stay in Hongkong from the morning of the 12th to the morning of the 26th March, 1910, two weeks, with all his expenses charged the Government of the United States, when he and his party sailed on the steamship *Chiyo Maru* of the Japanese Line Toyo Kaisha Kasha Co. for Shanghai, were unlawful and his claims for expenses false. It is also worthy of note to mention that the said Rufus H. Thayer's name does not appear in the public press as a registered guest at the said Hongkong Hotel.

The bill of said Rufus H. Thayer from the Hongkong Hotel for March, 1910, which is claimed to be false, shows on the face of it that he was not at all the dates therein named a guest of said hotel. That the charges from the evening of the 12th of March, 1910, to the morning of the 26th of March, 1910, are false charges and claims for money against the United States for the reason above stated, that there was no legitimate reason for the said Rufus H. Thayer to remain for said time, namely, two weeks, in Hongkong, a British settlement, and charge the United States for his hotel expenses, at the same time remaining away from China, his post of duty, for that length of time without leave of absence.

It was generally known on the Asiatic coast in February, 1910, that the Hamburg American Line excursion steamship *Cleveland*, with some 800 American tourists on a round-the-world trip would reach Hongkong about the middle of March, 1910.

The said Rufus H. Thayer planned his trip to reach Hongkong on his way back to Shanghai to meet these tourists and did so, returning to Hongkong on the 12th of March, 1910. Three days later the excursion steamer *Cleveland* came into the port of Hongkong.

Upon being requested by the Auditor for the State and Other Departments to explain his account for expenses in Hongkong, which account had been suspended, the said Rufus H. Thayer wrote a long letter, under date of October 15, 1910, to the district attorney of his court who had been the clerk and disbursing officer of the court at the time of the Hongkong visit, in which statement, intended as an explanation for the said auditor, appears the remarkable assertion that the said Thayer had remained in Hongkong, 90 miles away from Canton, on rumor that there would be possible danger to the tourists who visited that city, while the district attorney and stenographer of court had already returned to Shanghai.

Mr. Thayer, by this letter, sought to create the impression that Congress had conferred on him diplomatic duties in a British colony, or consular duties, hence his stay there which, of course, on its face, condemns it.

The said letter also contains a false statement that he, the said Thayer, had waited over *one* steamer, at which time the incident was over and fortunately without any undue event. As a matter of fact, over *six* first-class steamers left Hongkong for Shanghai, between the 12th and 26th of March, 1910, which he, the said Thayer, could have taken in continuation of his voyage; furthermore the said Thayer did not then return by the Pacific Mail Line, over which he bought a round-trip ticket at the expense of the Government.

The said bill of the Hongkong Hotel, the said letter of the said Thayer in explanation of his long stay in Hongkong, and the letter of the auditor suspending said account, together with other documents, are hereto annexed, under seal of the Treasury Department. (See pp. 116 to 132 of Exhibit No. 1, hereto annexed.)

This charge that the said Thayer did make a false claim for money, knowing it to be false, is not as serious as other charges hereinafter set forth, and is made at this time in order that his attempted explanation, false on its face, as well as absurd, may be used to show the caliber of the man and the extent he will go to justify himself.

This trip of Thayer and the officers of the court cost the Government about \$2,000 gold, for the reason that the said Thayer was out of the jurisdiction of China and the business of the court there was at a standstill and all court expenses going on.

Summary of said Thayer's personal expenses on circuit to Canton, China, lawfully due him in March, 1910, and of those expenses claimed and paid on false voucher and certificate during said month on said circuit, together with amount unlawfully claimed as salary for said month, while said Thayer remained, without leave of absence granted him and without knowledge of any Government officials in the United States, in the British colony of Hongkong for 14 days, on pleasure bent, outside of the jurisdiction of said United States Court for China.

The actual time taken by said Thayer making the round-trip voyage between Shanghai and Canton was 7 days; actual time he spent in Canton was 2½ days; ample time to change boats in Hongkong each way en route, 2½ days:

Total expenses due for 12 days, at \$10 gold a day.....	\$120. 00
Total amount paid on face of false voucher.....	\$194. 94
Amount overpaid on false voucher.....	74. 94
Salary on false voucher for March, 1910, for 14 days, at \$22.22..	311. 08
Total amount overcharged the Government for personal expenses on said circuit and for salary for March, 1910, without leave of absence granted to spend said 14 days in Hongkong.....	\$386. 08

The said false voucher makes claim for 26 days, March 4 to 29, 1910, while as a matter of fact only 12 days were actually taken by said court to transact the business and make the round trip, the remaining 14 days being spent in Hongkong, during which time he charged his hotel expenses to the Government, and received \$22.22 a day for each of the said 14 days, as salary.

Instead of saving the Government the sum of \$65.06 as alleged in the said false voucher (see Exhibit No. 1, p. 129) the Government was overcharged the sum of \$74.94 for expenses and the further sum of \$311.08 for salary during said 14 days which he unnecessarily overstayed in Hongkong.

Summary of amounts of money unlawfully demanded and paid on false vouchers for salary and expenses on circuit, not including a pleasure trip at the Government's expense to Manila, between the 15th day of March, 1909, when said Thayer first arrived in Shanghai, China, and the 5th day of October, 1912—3 years 6 months and 20 days.

Total time absent from his post of duty, during which he was outside of China, without leave of absence granted, 16 months and 16 days, including two weeks' stay in Hongkong, nearly half of the time since his appointment and arrival in China:

Total amount demanded unlawfully, in violation of section 35 of the United States Criminal Code, on false vouchers for salary during said absence.....	\$11, 022. 18
Same on false vouchers for expenses on circuit to Canton (1910).....	74. 94
Aggregate of amount paid not due on false vouchers.....	11, 097. 12
Aggregate of amount on face of false vouchers (including salary for March, 1910, and Hongkong expenses for that month).....	14, 861. 10

SPECIFICATION NO. 4.

The said Rufus H. Thayer, in said Shanghai, in the Republic of China, on and between, to wit, the 30th of September, 1911, and the 29th of June, 1912, did knowingly, willfully, and unlawfully make and present, and cause to be made and presented, for payment and approval to the Auditor for the State and Other Departments and to the Treasurer of the United States, at Washington, D. C., the said auditor and the said Treasurer, being then and there persons and officers in the civil service of the United States, four certain false, fictitious, and fraudulent vouchers against the Government of the United States, to wit, four vouchers for payment and reimbursement to him, said Rufus H. Thayer, through his agent, one Chinese named Wong Sung Dong, compradore of the United States court for China, of certain alleged rent of building No. 12 Whangpoo Road, in said Shanghai, which is alleged by said Thayer on said vouchers to be devoted solely to the business of said court, from the 1st of August, 1911, to the 30th of June, 1912, 11 months, and purporting on their face to be for rent of said building for the quarters ending September 30, 1911; December 31, 1911; March 30, 1912; and June 29, 1912, amounting on their face to \$2,137.75 lawful money of the United States.

Said vouchers are marked, respectively, to wit: "Original voucher No. 703"; "Original voucher, No. 779"; "Original voucher, No. 864"; and "Original voucher, No. 928," and are in words and figures set forth on pages Nos. 30, 31, 32, and 33, Exhibit No. 1, hereto attached and made a part hereof, whereas, in truth and in

fact, the said building is not devoted solely to the business of said court, but is devoted in part to the use of the said Rufus H. Thayer, to D. A. Wilson, jr., and J. B. Davies, respectively the judge, marshal, and clerk of said court for residential purposes. Further, that the respective sums set forth in said vouchers as the actual rent of said building is not the true rent thereof, as the said Rufus H. Thayer well knows; that the said building is leased from the China Realty Co. (Ltd.) by Amos P. Wilder, consul general of the United States at said Shanghai in his private, personal capacity at a rental of taels 200 a month (or taels 2,400 a year; see p. 34, Exhibit 1), equivalent, at exchange \$0.60, to \$120 lawful money of the United States a month (or \$1,440 a year), and that said Rufus H. Thayer charges the Government of the United States \$200 lawful money of the United States a month (or \$2,400 a year; see p. 17, Exhibit No. 2) for said building.

He, the said Rufus H. Thayer, then and there knowing the said four vouchers to contain fraudulent and fictitious entries, with fraudulent design, then and there to cheat and defraud the Government of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

NOTES ON THE LAW AND FACTS UNDER SPECIFICATION NO. 4.

LAW.—In addition to the law notes under specification No. 1, which are applicable under specification No. 4, it will be seen by reading sections 3678 and 3743 of the Revised Statutes that they had not been complied with by the disbursing and financial officer of the Department of State, assuming, *arguendo*, that said officer, instead of the Department of Justice, had jurisdiction, whose duty we will assume it was to examine such accounts, and for that reason the Auditor for the State and other Departments could not properly pass upon said account, as he did not have the contracts before him under which the vouchers for rent were drawn and sent to him for approval.

Further, it will be seen by section 1706, Revised Statutes, and section 544 of the Consular Regulations for 1896, which have the force of law, that consuls shall be allowed expenses for office rent not to exceed 20 per cent of the amount of annual compensation allowed to such officer.

The compensation of Consul Wilder is \$8,000 a year, yet in violation of said section 1706, Revised Statutes, and said section 544 of the Consular Regulations, he knowingly, willfully, and unlawfully made a lease with the China Realty Co., whereby he sought to bind the United States Treasury to pay the sum of \$5,812, lawful money of the United States, or 8,400 taels. (See pp. 7-13, and 34, Exhibit No. 2, hereto annexed.)

In direct violation of said said sections 1706 and 3678, Revised Statutes, the said Amos P. Wilder, consul general at Shanghai, after entering into said lease with the said China Realty Co. (see pp. 7-13 of Exhibit No. 2, hereto annexed), conspired with the said Rufus H. Thayer and one John M. Darrah, United States postal agent at Shanghai, to pay in part the rent under said lease for certain of said houses named in said lease and to pay more than the market value of said houses and more than the said Amos P. Wilder agreed to pay

for same under said lease. To make up part of the balance due for rent under said lease, the said Amos P. Wilder unlawfully diverted the sum of \$100 a month, or \$1,200, lawful money of the United States annually appropriated by Congress for a jail, for a part of one of said houses, to wit, No. 15 Whangpoo Road, for a jail for American prisoners, the whole of said house at a market value renting at taels 75—at exchange .60, equivalent to \$45—a month. He inhumanely and unlawfully used the upper floors and attic of said building for a jail, even in the hottest, deadliest of the humid, torrid summer weather, when Asiatic cholera was rampant in Shanghai, without having even a yard or a place out of doors for prisoners to exercise.

A large suitable building with suitable grounds for exercise and fresh air could readily have been rented in Shanghai for \$100 lawful money of the United States a month, equivalent at exchange .60 to Shanghai taels 166.66, a month.

In furtherance of said conspiracy, the said John M. Darrah agreed in writing (see pp. 14, 15 of Exhibit No. 2) to pay the sum of \$600 gold a year for the rent of the entire building No. 16 Whangpoo Road and the ground floor of No. 15 Whangpoo Road, the said \$600 being the entire amount allowed by the Post Office Department for the rent of suitable offices for the said postal agent in Shanghai.

Instead of using the entire building No. 16 Whangpoo Road for the business of the said postal agency the said John M. Darrah, only uses the ground floor thereof, together with the ground floor of said No. 15 Whangpoo Road, for the business of the postal agency, and uses the remainder of the rooms of said building No. 16 Whangpoo Road, to wit, the entire second and third floors and the attic thereof, for the sole purpose of a residence for himself and family.

In presenting the bills, vouchers, and receipts for rent of said postal agency for payment and approval to the Auditor for the Post Office Department, alleging in said bills and vouchers that the rooms in said Nos. 15 and 16 Whangpoo Road are devoted solely to the business of the said postal agency, the said John M. Darrah not only violates section 35 of the Criminal Code of the United States, and thus renders himself liable to an indictment in the District of Columbia under said section of the Criminal Code, but by sending said bills and vouchers to the Auditor for the Post Office Department with the quarterly detailed statement of vouchers required by that department, under an affidavit that said bills and vouchers are true and correct, and that the expenditures were necessary and proper, he knowingly and willfully committed perjury and rendered himself liable to be indicted therefor.

The said John M. Darrah has regularly every quarter since September 30, 1909, to June 30, 1912, committed perjury in making his quarterly statement to the Auditor for the Post Office Department, in that he has falsely sworn that the premises paid for by the United States, for the postal agency in said Shanghai, were used solely for the business of that department, when as a matter of fact the greater part of said premises was used by said John M. Darrah for residential purposes.

Since September 30, 1911, he has regularly every quarter violated section 35 of the United States Criminal Code, in that he has know-

ingly made and presented, and caused to be made and presented, false and fictitious claims against the Government of the United States, for rent for said postal agency, charging about twice the actual rent for the offices used for the said agency.

The said Rufus H. Thayer furthered the said conspiracy in that he authorized D. A. Wilson, jr., marshal and disbursing officer of said United States court for China, to enter into an agreement in writing (see pp. 17-18, Exhibit No. 2) whereby it was sought to bind the said court to pay an annual rental of \$2,400, lawful money of the United States, for the said house No. 12 Whangpoo Road, knowing the actual market value of said rent to be only \$90 gold a month, or \$1,080 gold annually, and further knowing that the said Amos P. Wilder had leased said house at the rate of taels 200 a month, equivalent at exchange \$0.60 to \$120 gold a month, or \$1,440 gold annually, or \$360 gold more than the said market value of said rent.

By agreeing to pay \$2,400 gold annually for said house the said Thayer knowingly and unlawfully agrees to pay said Amos P. Wilder \$960 gold annually more than the said Wilder pays for same, as is shown by the municipal tax receipts.

Having shown that the said Amos P. Wilder had conspired with the said John M. Darrah and the said Rufus H. Thayer, to unlawfully use Government funds to pay more than said buildings were actually rented for by said Wilder, to wit, \$600 annually for No. 16 and ground floor of No. 15 Whangpoo Road, \$1,200 unlawfully diverted annually from jail appropriation to pay for part of said No. 15 Whangpoo Road, and \$2,400 annually for No. 12 Whangpoo Road for said court, making a total of \$4,200 gold, it remains to show one of the motives of the said Amos P. Wilder in securing the two remaining houses under said lease, to wit, Nos. 13 and 14 Whangpoo Road. These two houses he gets for \$840 gold annually, or \$420 gold each, according to rate of exchange, being at the rate of \$120 gold a year less than the actual market rent.

Having diverted funds appropriated solely for other purposes, he secures this reduction of rent for said two houses, Nos. 13 and 14 Whangpoo Road, and then the consular officials use part of said houses as living quarters, at much below the actual market value, even this reduced rent not being paid.

One Frank W. Hadley, occupying the third floor of No. 14 Whangpoo Road for residential purposes for himself and wife, for which one W. Roderick Dorsey, vice consul general at Shanghai, falsely represents to the Secretary of State under date of Shanghai, March 16, 1912, the rental value to be \$75 gold a year. (See p. 26 of Exhibit No. 2.) There are three rooms on said third floor occupied by said Hadley. (See p. 24 of Exhibit No. 2.) This makes the monthly rental of the said three rooms \$6.25 a month, or \$2.08 gold each a month.

There is not an American in Shanghai who would not say that such a valuation for rent of rooms on the third floor of No. 14 Whangpoo Road is false. The electric light and fans alone used by said Hadley would cost more than that a month.

One George C. Hansen, vice consul occupies rooms in No. 13 Whangpoo Road, and these the said Dorsey falsely represents as valued at \$40 gold a year, or \$3.33 a month, or \$1.66 each room a month with electric light.

The fact that even these amounts have not been paid and no returns of room rent made to the Auditor for the State and Other Departments is worthy of note in connection with the said conspiracy.

Assuming *arguendo* that the said Amos P. Wilder merely wished to evade section 1706, Revised Statutes, and section 544, Consular Regulations, he must have done so knowingly in violation of section 3678, Revised Statutes. No reason can be assigned for diverting the sum of \$1,200, appropriated by Congress for the sole purpose of paying for the rent of a suitable building for a jail in China for American prisoners, and by so diverting this sum of \$1,200 help to reduce the rent of a consulate which an act of Congress, section 1706, Revised Statutes, says shall not exceed 20 per cent of the consul's compensation—this diverting of said sum at the risk of seriously endangering the health, if not the life, of Americans held as prisoners in said attic of said No. 15 Whangpoo Road during the exceedingly hot and almost unbearable summer season in Shanghai, with no place for said prisoners to exercise. But as said Thayer and Wilder are absent from China five or six months a year on pay, prisoners' health is a subject of no importance to them.

No reason can be assigned for inducing the said Darrah to pay \$600 a year for the ground floor of Nos. 15 and 16 Whangpoo Road, when that amount is appropriated for post office solely, and being a party to the false returns and perjured affidavits of said Darrah to the Auditor for the Post Office Department. The said affidavits were made before consular officers, bear the seal of the consulate, and the said officers knew that said No. 16 Whangpoo Road was not devoted solely to the business of the United States postal agency at Shanghai, as said Darrah falsely swore that it was so solely devoted.

No reason can be assigned for charging the United States court for China the sum of \$2,400 gold a year when the assessed rent of said building, as shown by the municipal tax receipts, was only taels 2,400 a year, or \$1,440 a year. (See pp. 35, 36, 37 of Exhibit No. 1, hereto annexed.)

Every American in Shanghai who has occasion to go to the United States postal agency there knows that it is in a row of buildings, each building identical to the other; that buildings Nos. 16, 15, 14, and 13 Whangpoo Road are in this said row; that they are identically alike, each to the other; that said Americans or any sane person in Shanghai would say that it is false to represent that No. 16 and the ground floor of No. 15 Whangpoo Road is worth \$600 a year; that the second, third, and attic floors of No. 15 Whangpoo Road are \$1,200 a year; and that Nos. 14 and 13 Whangpoo Road each rent only for \$420 a year, while No. 12 Whangpoo Road is worth \$2,400 a year all lawful money of the United States.

For false and absurd as these representations are, made by the said Amos P. Wilder under date of Shanghai, December 22, 1911 (see page 2 of Exhibit No. 2), he makes them with impunity to the Secretary of State at Washington, some 10,000 miles away, knowing that there is no postal inspector of the United States in China, and that the said Darrah and the said consular officials, notwithstanding that they may violate the criminal laws, have the protection of the said Rufus H. Thayer as judge of the said United States Court for China (see specification 6), with whom the said Wilder conspired as aforesaid.

The said Thayer knew said acts were in violation of section 3678, United States Revised Statutes. This section provides that:

All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

That the said Rufus H. Thayer from the 1st day of August, 1911, to the 1st day of May, 1913, one year and nine months, has caused to be paid from the annual appropriation of \$2,400 gold a year for rent of building for court the sum of \$80 gold a month more than the said Amos P. Wilder, United States consul general, alleges in writing under seal that he Wilder pays for it, making the total sum overpaid for said one year and nine months \$1,680 gold.

That said Rufus H. Thayer well knowing that the actual rent paid for said building, No. 12 Whangpo Road, Shanghai, is only taels 200, equivalent, at exchange \$0.60, to \$120 gold, or \$1,440 gold a year, pays the sum of \$2,400 gold a year, or \$960 a year more than the rent due, and at the same time falsely represents to the Congress of the United States, through the Department of State, that the rent for said court building is \$2,400 gold a year.

Further, the said Rufus H. Thayer authorized the sending of vouchers for rent of said building for court to the Auditor for State and Other Departments, which vouchers contain the false statement that the rooms in said building are devoted solely to the business of the said United States Court for China, the said Thayer well knowing that he himself uses part of said building for residential purposes, including use of the electric lights, coal, and electric fans, and servants, all paid by the Government, ostensibly for court purposes, but really in part for residential purposes of said Thayer and others.

In violation of said section 3678, Revised Statutes, by said Thayer and said Amos P. Wilder, the sum of \$2,064 gold is diverted annually from the purposes and objects for which Congress solely appropriates it, to wit, \$25 a month out of post-office appropriation, \$300 a year; \$67 a month out of jail-rent appropriation, \$804 a year; \$80 a month out of court-rent appropriation, \$960 a year; and false returns are made to the Auditor for State and Other Departments to mislead as to this unlawful diversion of public funds. (See interpretation of sec. 3678, Rev. Stat., by Attorney General, 18 Op. Atty. Gen., 463.)

The said Auditor for the State and Other Departments was unable to discover the said violation of said section 3678, Revised Statutes, for the reason that the officer of the Department of State who received these said leases from said Wilder overlooked section 3743, Revised Statutes, in that he withheld or failed to send same to the said auditor.

Further, the said officer of the Department of State failed either to carefully examine said leases and agreements between the said Wilder and the United States Court for China, or, examining them, failed to notify said Wilder and Thayer that said documents were in violation of said section 3678.

At any rate the said leases and agreements were held at the Department of State until certified copies of them were asked for by Hon. William Hughes, United States Senator from New Jersey.

When said certified copies of said leases were exhibited to said auditor's office said office advised that said leases and agreements were in violation of said section 3678 and that the withholding of them at the Department of State instead of promptly depositing

them in the office of said auditor was in violation of section 3743, Revised Statutes, which requires that:

All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the auditors of the Treasury, according to the nature of the contracts. * * * (As amended by the Dockery Act of July 31, 1894, 28 Stat. L., 210.)

Section 1706, Revised Statutes, provides as follows:

The President may allow consuls general, consuls, and commercial agents, who are not allowed to trade, actual expenses of office rent, not to exceed, in any case, 20 per centum of the amount of the annual compensation allowed to such officer, whenever he shall think there is sufficient reason therefor.

The annual compensation of said Amos P. Wilder is \$8,000 a year. Twenty per cent thereof would be \$1,600.

By said section 1706, Revised Statutes, said Wilder is limited to expenses of office rent for the consulate, yet under the said contract with the said China Realty Co. he undertakes to pay yearly the sum of 8,400 taels—equivalent at exchange 60 to \$5,040, lawful money of the United States—\$3,440 more than is allowed under said section 1706.

It can not be seriously contended that said Wilder as consul general had authority to contract for a United States postal agency, yet he undertakes to do so, but fails to send his contract to the Auditor for the Post Office.

Neither can it seriously be contended that he had authority to contract for the rent of a building for the United States Court for China, yet he undertakes to do so, but fails to send a copy of the contract to the Auditor for the State Department.

The said contract with the said China Realty Co. was not authorized by the Department of State and could not have been authorized by that department for the reason that it has no jurisdiction or authority in relation to post offices or agencies, these being under the Post Office Department; for the further reason, that Congress by section 1706, Revised Statutes, has limited the expenses of office rent, and by section 3678, Revised Statutes, has made it mandatory that:

All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

In open defiance of this act of Congress the said Wilder unlawfully diverts \$58 a month from the appropriation made for rent of a jail, and in conspiracy with said John M. Darrah and Rufus H. Thayer the said Darrah diverts to his own use \$25 a month, to wit, to rent of rooms in building No. 16 Whangpoo Road for private residential purposes, paying the whole amount allowed for said postal agency, namely, \$50 a month, to said Wilder for said building, while the said Thayer diverts \$80 a month more for the rent of building No. 12 Whangpoo Road than the municipal tax receipts show the assessed rental value of that building, paying said amount under the said contract made by D. A. Wilson, jr., marshal and disbursing officer of said United States court for China, with the said Wilder, by said Thayer's direction. (See pp. 17 and 18 of Exhibit No. 2, hereto attached.)

The act making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1912, provides, under the

head of "Expenses of prisons for American convicts, 1912," as follows:

Actual expense of renting a prison at Shanghai for American convicts in China, \$1,200; for contingent expenses, \$1,200; for the wages of keeper of such prison, \$1,200; and for the wages of an assistant keeper of such prison, \$800; in all, \$4,400. (See p. 56 of Digest of Appropriations, 1912.)

From the above appropriation it will be seen that Congress intended that ample provisions should be made for prison rent and expenses in China, which intention is defeated by said Wilder employing a cheap Sikh Indian watchman at \$15 a month and diverting the balance appropriated by Congress, and in confining prisoners in the upper rooms and attic of said No. 15 Whanpoo Road, the rent of the entire building being not more than 75 taels a month equivalent at exchange .60 to \$45. The lower floor of said building being rented by said Wilder to the said John M. Darrah as part of the said postal agency, the market rental value of said ground floor unfurnished and without electric light, heat, water, or taxes being about 20 taels which at exchange .60 is equivalent to \$12.

It follows, therefore, that the rent of said upper rooms of said No. 15 Whanpoo Road, used as a jail by said Wilder, is valued at \$33 a month; that in charging the Government \$100 therefor he overcharges \$67, in consequence of which unlawful diversion of this appropriation prisoners held for trial, as well as convicts, do not have the prison accommodations contemplated by law, no provision whatever being made by said Wilder for a prison yard where fresh air and exercise, so necessary in the Shanghai summer to maintain health, may be had.

Summary of rents, actual value, and amount overcharged the United States.

House No. 16 Whanpoo Road (post office), part unlawfully used for residential purposes:		
Actual rent \$45 per month, 12 months.....	\$540	
Yearly amount actually paid.....		\$600
House No. 15 Whanpoo Road (jail):		
Actual rent \$45 per month, 12 months.....	540	
Yearly amount actually paid.....		1, 200
House No. 12 Whanpoo Road (United States Consular Court), part unlawfully used for residential purposes:		
Actual rent \$120 per month, 12 months.....	1, 440	
Yearly rent actually paid.....		2, 400
House No. 13 Whanpoo Road (consulate), part unlawfully used for residential purposes:		
Actual rent \$35 per month, 12 months.....	420	
Yearly amount actually paid.....		420
House No. 14 Whanpoo Road (consulate), part unlawfully used for residential purposes:		
Actual rent \$35 per month. 12 months.....	420	
Yearly amount actually paid.....		420
Actual yearly rent.....	3, 360	
Yearly amount paid.....		5, 040
Actual yearly rent overpaid.....		1, 680
House No. 16 Whanpoo Road, difference overpaid, \$5 per month, 12 months (not including rent of basement of No. 15 Whanpoo Road, which basement was included with the occupation of No. 16 Whanpoo Road).....		
		60
House No. 15 Whanpoo Road, difference overpaid, \$55 per month, 12 months (including only the second and third floors and attic of No. 15).....		
		660
House No. 12 Whanpoo Road, difference overpaid, \$80 per month, 12 months.....		
		960
Total amount overpaid yearly by the Government since Aug. 1, 1911....		
		1, 680

As seen above, Nos. 13 and 14 Whanpoo Road were used as the consulate buildings, the rent of these two buildings being \$840, or \$420 each yearly. As the consul general was entitled to expend \$1,600 yearly for consular offices, this amount being 20 per cent of his salary, had he spent the full amount instead of the \$840 there remains the sum of \$920 unaccounted for yearly in actual rental value. (See Rev. Stats., 1706.)

SPECIFICATION No. 5.

That the said Rufus H. Thayer, at Shanghai, in the Republic of China, to wit, on the 31st day of May, 1910, being then and there judge of the United States Court for China, one Frank W. Hadley, United States vice consul and judge of the United States Consular Court at said Shanghai, though not a lawyer, nor a student of law and never having been admitted to practice law in any State or Territory of the United States or elsewhere, issued, upon the request of an alleged Chinese tailor, at the instigation of a notorious procuress, white slaver and keeper of a house of prostitution in said Shanghai, a warrant for the arrest of Miss S. Fisher, on the false charge that said Miss Fisher owed said alleged tailor the sum of \$235 Mexican (equivalent to \$117.50 lawful money of the United States), and that the said Miss Fisher was about to leave the jurisdiction of said consular court with the intent of evading payment of said claim, whereas in truth and in fact the said Miss Fisher did not owe said tailor any money whatever; that said Miss Fisher was placed under arrest by one T. C. White, marshal of said court, who forcibly took her from the Palace Hotel, Shanghai, to the consular jail and held her a prisoner there. That said Miss S. Fisher had been lured into said house of prostitution by said procuress a few days before said warrant of arrest was issued, and wishing to leave said house of prostitution and return to her home in San Francisco, Cal., she bought a ticket for that port and was to sail the same day, 31st May, 1910.

The object of issuing of said warrant of arrest was to thoroughly demoralize said Miss Fisher, make her miss her ship home, make her notorious, put her to expense, cause her to spend the little money she had and so compel her to return to said house of prostitution, and to said life of shame.

The above facts were well known to said Frank W. Hadley and to the said Rufus H. Thayer.

The said Miss S. Fisher, through an attorney, immediately after her arrest, petitioned the said Rufus H. Thayer as judge of the United States Court for China for a writ of habeas corpus, to issue to the said T. C. White, marshal of the said consular court, and prayed that said writ be made immediately returnable, setting forth that said Miss Fisher was unjustly and unlawfully detained in the custody of said T. C. White; that there was no judgment of debt against her, and that she was not indebted.

The said alleged Chinese tailor put up no bond or security to cover any damages the said Miss Fisher might sustain by reason of her unlawful arrest.

The said petition for the writ of habeas corpus was taken at once to the clerk of the said United States Court for China, one Frank E. Hinckley, who informed the petitioner's attorney that the rule of

said court requiring a deposit of \$35 gold to be paid as a court fee on filing a case applied to said petition, and that said petition could not be filed unless said court fee of \$35 was paid or unless said Judge Thayer ordered otherwise.

The petitioner's attorney therefore did not deposit said \$35 with said clerk nor ask him to administer an oath in verification of the facts set forth in said petition, but instead went at once to the chambers of said Judge Thayer and handed to him the said petition, stating that the said clerk refused to file same of record without the said \$35 deposit fee, and also at the same time requested the said judge to administer an oath in support of said petition.

To this the said judge replied, in effect, that there was no precedent in his court for filing said petition without depositing said \$35 fee; that the clerk was right in not accepting said petition for record without said fee; that the young woman would receive justice in the consular court, and finally did unlawfully and contemptuously neglect and refuse to administer said oath, did neglect and refuse to order the writ to be issued as prayed, and was thus guilty of malfeasance in office. Whereupon the attorney for the petitioner stated he would give publicity to the facts and thus expose all parties in the conspiracy to prevent Miss Fisher leaving Shanghai. This statement was communicated to the attorney for the alleged tailor and to the said Frank W. Hadley. Word of this within a few minutes reached the moving spirit of the conspiracy, the said procuress, who put in appearance in the office of the said Frank W. Hadley and paid into his hands the alleged amount due the alleged tailor. She, the said procuress, gave no reason why she should have paid said amount under the circumstances and facts as above stated.

The said Frank W. Hadley then ordered the release from imprisonment of the said Miss S. Fisher. (For proceedings in above case, see certified copy of transcript of record under seal of the American consulate, Shanghai, China, and the carbon copy of said petition for a writ of habeas corpus marked, respectively, "Exhibit No. 4" and "Exhibit No. 4A," hereto attached and made a part hereof.)

FACTS LEADING UP TO SPECIFICATION NO. 5.

In or about the latter part of March, 1910, two accomplished young women, bent upon seeing the world, especially the Far East and the Orient generally, bought tickets in San Francisco for the trans-Pacific voyage. After visiting Japan they went to Shanghai, China, where they were guests of the Palace Hotel, one of the leading hotels in that far-famed port.

One of these young women was well known in the musical circles of San Francisco. The San Francisco Dramatic Review of February 19, 1910, published her photograph, and spoke of her as—

the dainty, sweet Sue Tusher, who is creating a lot of talk on account of her voice. * * * Miss Tusher has a very fine dramatic soprano voice. She is spoken of and known as Sue Tusher, the girl with the pretty face. Miss Tusher has had some flattering offers to do concert work, but prefers remaining where she is known and recognized as a favorite.

Miss Tusher, while an accomplished musician and passionately fond of traveling, was yet withal somewhat too self-reliant and wayward. In consequence of which she fell an easy prey to the wiles of a "cadet" of a notorious Shanghai procuress, and before she

fully realized what had happened, she found herself in a house of ill fame at the mercy of said procuress, with all her ideals of oriental splendors and travel shattered.

Within a few days after being thus entrapped she made her escape, and bought a ticket to San Francisco, to return home, with no further desire to see any more of the Orient. She sought refuge in the Palace Hotel, to await the sailing of the first trans-Pacific passenger ship for San Francisco.

If Miss Tusher thought her troubles ended here she was wrong. She did not know all the wiles of the procuress—even the most common one resorted to by them, to secure the return into their power of a woman who has once felt it and escaped; that is, the resort by them to the courts, under the name of some alleged tailor, for a warrant of arrest for an alleged debt on the ground of seeking to leave the jurisdiction of the court to evade paying same.

This trick was tried on Miss Tusher. It almost succeeded in its object, and would have had not the said procuress and her coconspirators been thwarted by the events following a petition, though denied, to the said Rufus H. Thayer, as judge of the United States Court for China, for a writ of habeas corpus for the release of Miss Tusher from imprisonment in the United States consular jail.

Here she was forcibly taken under arrest by one T. C. White, marshal of the United States consular court at Shanghai, from the said Palace Hotel, under a warrant issued by one Frank W. Hadley, as judge of said consular court.

Hadley, by the way, was not a lawyer, was ignorant of the most elementary principles of the law, and was in conspiracy with said procuress to defeat Miss Tusher's departure from Shanghai.

The denial of the writ of habeas corpus, a writ of right, is the basis of the fifth specification.

NOTES ON LAW AND FACTS UNDER SPECIFICATION NO. 5.

LAW.—The writ of habeas corpus has been in force so long in the English courts that the date of its origin can not now be ascertained. Traces of its existence are found in the Year Book 48 Ed., III, 22. In the reign of Henry VI it was familiar to the judges and well understood by them.

Our Federal Constitution provides in Article I, section 9, §2, that:

The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

The constitutions of the several States contain similar provisions.

The writ issues as a matter of course, and on the return to it the court decides whether the party applying is denied the right of proceeding any further with it. (4 Wall., 115.)

The jurisdiction of the Federal courts in writs of habeas corpus is prescribed by several acts of Congress. (See sec. 14 of the judiciary act of Sept. 24, 1789, vol. 1, Stat. L., 81; Rev. Stat., sec. 642.)

As an evidence of the steps taken to guard the personal liberty of citizens by the States may be mentioned the legislation of the State of California. By section 1505 of the penal code of that State it is provided that:

If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed, refuses

obedience to the command thereof he shall forfeit and pay to the person aggrieved a sum not exceeding \$5,000, to be recovered by action in any court of competent jurisdiction.

Everyone who is deprived of his liberty is entitled to attempt to regain it by applying for a writ of *habeas corpus*. This is what is meant by the *privilege* of the writ. It is the *privilege* one has to ask that a writ be issued and the cause of his detention inquired into.

When one is committed to await his trial for a crime it is a privilege to be allowed a writ whereby the legality of his arrest may be inquired of, and he may be discharged or admitted to bail. But when one who has not committed and is not supposed to have committed a criminal offense is wrongfully restrained of his liberty, that he should be allowed to institute a civil suit to be relieved from the confinement is a *right* which every State is bound to secure at all times to its citizens. (Watson on the Constitution, vol. 1, p. 723.)

Chief Justice Taney, in *ex parte Merryman*, after reviewing the constitutional history on the subject of *habeas corpus*, held that Congress was the only power which could suspend the privilege of the writ. (Taney's Decisions, 246, 269.)

But the said Rufus H. Thayer, in far-off China, assuming the despotic powers of a Czar, unhesitatingly and unscrupulously, suspends the writ with impunity. He knows that American citizens in China must submit to his arbitrary power for the reason that the nearest appellate court is in California, to reach which requires nearly a month, and this at great expense, which many can not afford.

Miss S. Fisher, whose true name is Miss Sue Tusher, had a fine dramatic voice. But a couple of months before she fell into the hands of the said procuress and failed to secure relief from the United States court for China, the San Francisco Dramatic Review of February 19, 1910, published her photograph and gave a most complimentary notice of her voice and beauty. Said notice and photograph hereto attached, marked "Exhibit No. 4b," and made part hereof.

As further tending to establish the fact that a conspiracy existed to prevent the said Miss Fisher leaving Shanghai, and to keep her in Shanghai for an immoral purpose, as aforesaid, several cases will now be set forth in detail with certified copies of transcript of record of the respective cases.

These cases will show that reputable Chinese merchants, who had sued American citizens in the said United States consular court and the said United States court for China, and had obtained judgments in their favor, could not, after exhausting all legal remedies to said judgments, restrain the judgment debtors by means of *ne exeat*, leaving the jurisdiction of said courts to evade the payment of said judgments.

The judgment creditors, upon learning that they were about to lose the fruits of their suits, sought by bills in equity to secure *ne exeat*, discovery, and accounting, to prevent their debtors leaving the jurisdiction of the court and for a discovery of their assets, and for an accounting of money in the hands of the judgment debtors as agents of the judgment creditors.

The said courts either denied a hearing on said bills or dismissed the same.

These cases were those of *Tze Hai Ching v. Chas. A. Biddle*, and of *Nee Chang Mow v. Andrews & George*. The history of the latter case was a subject of report to Congress. (See Report of Inspection of United States consulates in the Orient, H. Doc. No. 665, 59th Cong., 1st sess.) The extraordinary manner of the said Thayer's treatment of this case will be set forth in detail after going into the details of the case of *Tze Hai Ching v. Chas. A. Biddle*.

On October 23, 1911, the said *Tze Hai Ching* obtained a judgment against the said *Chas. A. Biddle* in the United States Court for China, the said *Biddle* having confessed judgment to the amount of Mexican dollars 2,954.72, equivalent to about \$1,477.36 lawful money of the United States at exchange 50.

The attorney for the plaintiff in the above case on the 13th day of March, 1912, at Shanghai, secured a writ of execution from the said court against the goods of the said defendant, *Charles A. Biddle*. This writ was duly issued by *James B. Davies*, clerk of the said United States Court for China, and placed into the hands of *Daniel A. Wilson, jr.*, marshal of said court for execution.

The plaintiff on the said 13th day of March, 1912, deposited with the said clerk the sum of Mexican dollars 15 to secure the costs of said writ, and received a receipt for same. (See Exhibit No. 6, hereto annexed and made a part hereof.)

The said marshal having this writ in his possession to serve was instructed by the judgment creditor's attorney to execute same against the goods and property of the said judgment debtor in the *Savoy Hotel*, Shanghai, of which hotel the said judgment debtor was manager, and said to be half owner of the stock of the corporation owning said hotel.

The said marshal was further instructed to execute said writ against the monies deposited in the said judgment debtor's name in the *International Bank*, located at No. 1 Kinkiang Road, said Shanghai, said bank being an American corporation within the jurisdiction of the said United States Court for China.

The said marshal neglected and failed to obey the said instructions given him as aforesaid and made a false return of no goods found.

The said judgment creditor having reason to believe that the said judgment debtor was shortly going to leave China for the United States, sought the issue of another writ of execution—an alias writ.

To secure this second writ, \$35 lawful money of the United States was deposited with the said clerk of said court, and the said marshal was instructed to execute same at once on the moneys standing to the credit of *Charles A. Biddle's* name in the said *International Bank*. The said clerk issued said \$35 gold, signed by said clerk of court, and delivered same to said marshal, hereto annexed and marked "Exhibit 6A," pages 1 and 3.

The said clerk of court neglected, failed, and refused to issue said alias writ of execution. (See letter from said clerk dated Shanghai, June 13, 1912, Exhibit No. 6A, p. 4, hereto annexed.)

On the 14th June, 1912, the said *Charles A. Biddle*, his wife, and child were first-class passengers on a trans-Pacific ship, to wit, the steamship *Persia*, from Shanghai to Vancouver, B. C., via San Francisco, leaving Shanghai on that date. (See *North China Herald* for June 22, 1912, p. 886.)

The marshal upon being instructed to act on the aforesaid first writ of execution, as aforesaid, and upon the said second writ asked for, said he would not execute the writ issued, or the second writ asked for, unless he was first paid in cash one and a half times the amount of said judgment, to wit, Mexican dollars 4,432.08, or United States gold dollars 2,216.04.

A complaint having been filed in the United States court on or about the 28th day of January, 1911, against an acting marshal of said court, and the judge in that case having threatened to punish the attorney for filing said case and having stated that he would not permit his court to be used to bring suits against officers of his court (see specification No. 6), the attorney for the said judgment creditor in the said case, Tze Hai Ching, against the said judgment debtor, Charles A. Biddle, placed the fact of the said Marshal Daniel A. Wilson's refusal to execute said writ unless paid the said sum of \$2,216.04 gold, or its equivalent in Mexican currency, before the said Rufus H. Thayer, in chambers of said court, in presence of a witness, an associate attorney in said case. The said Thayer stated emphatically that the said marshal was within the law in refusing to execute said writ unless protected by the said amount deposited in cash as demanded by him.

It is respectfully submitted that the stand taken by the said Thayer on the execution of said judgment rendered on the confession of the judgment debtor, an American, in favor of a Chinese subject, a reputable merchant (see Exhibit No. 5, pp. 1 to 21 thereof, hereto annexed), the refusal of the marshal to execute same, with the approval of the said Thayer, defeats the object for which said court was created and brings the American Government and Americans generally in the Orient into disrepute, causing them to be regarded with suspicion by the Chinese merchants.

That said Thayer was grossly in error, and that said marshal was liable on his official bond, if a suit on said bond could have been fairly tried in said court without having been prejudged as aforesaid, it is respectfully submitted are established by the following authorities, namely:

The purpose of a writ of execution is to authorize the officer to whom it is directed and delivered to seize and hold the property of the debtor for the satisfaction of the amount ordered to be made by such writ. And in the absence of instructions it is his duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandates. If at the time of the delivery of the writ the plaintiff, being apprehensive of the loss of his debt unless it be immediately levied, directs the officer to proceed forthwith, or points out property belonging to the defendants and requests its seizure, it is his duty to make every possible effort to comply with such directions or instructions consistent with a just regard for other duties which may devolve upon him, or he will be answerable for the consequences, if any injury or loss result to the plaintiff by reason of any neglect or omission of such duty. (Habersham v. Sears, 11 Or., 433; Guiterman v. Sharvey, 46 Minn., 183; 24 Am. St. Rept., 218; Freeman on Executions, 3d Ed., Vol. 1, pp. 394-395.)

The return of an execution wholly unsatisfied, after a negligent delay by the sheriff in making the levy, establishes *prima facie* his

liability for the whole amount of the judgment. (*Guiterman v. Sharvey*, 46 Minn., 183; 24 Am. St. Rep., 218.)

A writ or process from a court having jurisdiction of the parties and process and regular on its face is a sufficient protection to a marshal who levies or does other acts under it and to his deputies and aids. (*Matthews v. Densmore*, 109 U. S., 216; 27 L. Ed., 912; *Foucher v. Kenner*, 36 La. Ann., 149; *Goddard v. Parsons*, 12 Utah, 376; 42 Pac., 1134.)

If a writ of execution is not avoided by proper proceedings it is in all other courts a sufficient protection to the officer executing it. (*Matthews v. Densmore*, 109 U. S., 216.)

In the case of *Matthews v. Densmore* (109 U. S., 216) the marshal for the eastern district of Michigan seized the goods of the defendants in error under a writ of attachment issued from the circuit court of that district on a defective affidavit: *Held*, That in proceedings in the State courts of Michigan against the marshal the process is sufficient to protect him if the property seized under it was liable to be attached in that suit.

A parallel case, in so far as it relates to the protection of the marshal in enforcing a writ of execution against money in bank, is that of *the Bank of the United States v. The Bank of Washington* (6 Pet., 8). Mr. Justice Thompson in delivering the opinion of the United States Supreme Court in this case said:

Whatever, therefore, was done under the execution toward enforcing payment of the judgment was done under authority of law. Had the marshal, instead of the runner of the bank, gone with the execution and received the money or *coerced payment*, he would have been fully justified by authority of the execution. (6 Pet. (U. S.), 16.)

Section 787, Revised Statutes, provides that—

It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein and to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty.

The said plaintiff, having no money to make said deposit as unlawfully demanded by said marshal and learning that said judgment debtor had bought two first-class tickets for passage for himself and wife to San Francisco, and was thus going beyond the seas and beyond the jurisdiction of said court, sought to detain said judgment debtor as said Miss Sue Tusher had been detained.

To this end the plaintiff filed on June 13, 1912, an original bill in equity in the United States consular court seeking to recover on his said judgment the amount of \$500, lawful money of the United States, the limit of jurisdiction of said court. The said Rufus H. Thayer by this time had gone to Europe on his usual annual six months' absence from his post of duty without leave, so the plaintiff could get no relief or seek no relief from said United States court for China if it would have granted it. Hence his willingness to collect on his judgment the said sum of \$500 in the United States consular court.

The said bill in equity prayed for a writ of ne exeat, set forth the said judgment in his favor, that said judgment debtor was going beyond the seas and beyond the jurisdiction of said court to evade payment of said judgment, and further prayed for discovery of assets of said judgment debtor.

The said consular court absolutely refused to permit the said original bill with summons to be served upon the judgment debtor, notwithstanding that all court fees had been deposited with the clerk of said consular court; the said consular court further absolutely denied the right of the judgment creditor to be heard in said court on his said original bill and refused to permit the attorney for said judgment creditor to present said case in court, and arbitrarily dismissed said original bill without any hearing on same.

Upon being asked the reason for this high-handed action the said consular court said it would send a letter to the attorney for the judgment creditor the following day. The next day, the 14th of June, 1912, a letter transmitting a so-called decision of said court was received, so called because no hearing was had on said bill, no summons issued to the defendant, no appearance put in by said defendant, and no proceedings of any nature whatever had on said original bill. (The full transcript of record in this case certified, marked "Exhibit No. 5," pp. 1 to 21 thereof are hereto annexed and made part hereof.)

It will be seen from said transcript of record that there was no summons issued, that no appearance was made by the judgment debtor; defendant, that no hearing was had on said original bill, yet there was a so-called "decision" of said court denying the prayers of the plaintiff, and dismissing his said bill.

The judgment debtor and his wife sailed as first-class passengers for San Francisco from Shanghai on the 14th day of June, 1912.

The law is well settled that a plaintiff may waive part of his claim and remit sum in excess of jurisdictional amount. (American Digest, Century Edition, vol. 13, sec. 428, chs. 2267-2269; *Putnam v. Shelop*, 12 Johns., 435, New York; *Tennant v. Gray*, 5 Munf., 494, Virginia; *Wharton v. King*, 60 Ala., 365; *Giles v. Spinks*, 64 Ga., 205; *Velvin v. Hall*, 78 Ga., 136; *Stewart v. Thompson*, 85 Ga., 829; *Wright v. Smith*, 76 Ill., 216; *Wooster v. McKinley*, 1 Kans., 317; *Hussey v. King*, 83 Me., 568; *Matlack v. Lare*, 32 Mo., 262; *Roof v. Meyer*, 8 Civ. Proc. R., 60, New York; *Van Clief v. Van Vechten*, 130 N. Y., 571; *People v. Marine Court*, 36 Barb., 341, New York; 23 How. Prac., New York; 14 Abb. Prac., New York.)

From said transcript of record in this case and from that in the case of the arrest of Miss Sue Tusher (Exhibit No. 4, pp. 1 to 6 thereof) it will be seen that said consular court holds that a young woman who seeks to leave China and a life of shame may be arrested and imprisoned on the unsupported statement of an alleged Chinese tailor that the said young woman owes him a certain sum of money for work and material and is about to leave the jurisdiction of said court, but that a man, an American citizen, against whom there is an unsatisfied judgment, a certified copy of which was filed in said court, who had bought first-class tickets for himself and wife from Shanghai to San Francisco and was to sail the next day beyond the seas and beyond the jurisdiction of said court for the purpose of evading his just debts, as evidenced by said certified copy of said judgment, could not be stopped and could not be placed under arrest as Miss Sue Tusher had been by said consular court.

The rather startling treatment by the said Thayer of the case of *Nee Chang Mow v. Andrews & George*, wherein the plaintiff, as judg-

ment creditor, sought to enforce the payment of his judgment, will now be stated.

After H. H. D. Peirce, Third Assistant Secretary of State, had made his report on his inspection of consulates in the Orient, in which this case was treated as one of the charges of malfeasance in office against John Goodnow, United States consul general at Shanghai, and after Secretary of State, Mr. Root, had sent said report to the President to be transmitted to Congress, in response to the resolution of the House of Representatives of the 8th March, 1906, and was printed as House Document 665, Fifty-ninth Congress, first session, a Court of the United States for China was created.

With the creation of this court there grew renewed hopes of having said judgment enforced.

To evade the jurisdiction of said court after it was organized in Shanghai, the said judgment debtors, Andrews & George, incorporated their firm in Shanghai into a British corporation under the name of Andrews, von Fischerz & George (Ltd.), and transacted business at No. 1 Foochow Road, Shanghai, where they are now located. The said incorporation was under the Hongkong ordinances. By doing this they took from the United States Court for China its jurisdiction over of the stock in trade of said judgment debtors in Shanghai, and they then went to Yokohama, Japan, where they carried on a partnership business under the firm name of Andrews & George.

They protected their business interest in Shanghai by having it managed by a German subject named B. von Fischerz. By living in Japan they thus removed their persons beyond the jurisdiction of said United States Court for China. Thus their persons were not within the jurisdiction of said court, while their property was placed under the protection of the British laws and removed from said United States court. Yet they thus contrived without trouble to continue to conduct the business in Shanghai by a manager and have their property within the said jurisdiction, without being subject to any judgment of the said United States Court for China.

In October, 1911, the said judgment debtor, H. W. Andrews, stopped over at Shanghai between boats, bound for Yokohama, Japan. His judgment creditor espied him, learned that he was passing through Shanghai on his way to Japan, and without delay filed a bill in equity wherein he alleged all the jurisdictional facts to give said United States Court for China jurisdiction to entertain said bill, paid the court fees for filing said bill, and took a receipt for said fees. (See Exhibit No. 8, pp. 1 to 14 thereof.) Execution on this judgment had been already sought in the consular court which rendered said judgment, but no recovery was had thereon.

The said judgment remained in full force, not reversed, paid off, or satisfied to the plaintiff. The said bill prayed for a writ of *ne exeat*, alleging the judgment debt, the fraudulent transfer of his property, and that the debtor was about to leave the jurisdiction of the court to evade payment; that the said debtor be either arrested or placed under a bond to protect said debt; and also petitioned for an accounting and for a discovery of the assets of said judgment debtor.

The certified judgment on which said bill was based is annexed hereto as Exhibit No. 8, pp. 7 to 14 thereof.

While this case justified and required the court to issue said writ or order for arrest, grounds for which were entirely lacking in the said case of Miss Fisher, who had been arrested on the unsupported statement of an alleged tailor, while in this case against the said Andrews there was a certified copy of a judgment to establish the indebtedness against said Andrews, the said court refused to issue said writ or order for arrest of said Andrews.

An answer was filed to said bill by the said defendant, H. W. Andrews, in which he admitted that said judgment had been rendered against him by the said United States consular court, but alleged that a bill in equity was not a property remedy to sue for a writ of ne exeat, or for a discovery of assets, nor for an accounting.

The plaintiff filed an amended bill, having been granted only 24 hours within which to amend his bill, to which the said defendant demurred, but failed to file certificate of his counsel that in his opinion it was well founded in point of law, and further failed to support said demurrer by affidavit that it was not interposed for delay, which two requirements of certificate and affidavit were essential under rule 31 of the Rules of Practice in Equity in all the courts of the United States. (See United States Supreme Court Rules then in force—October and November, 1911.)

The said rule 31 of the Rules of Practice in Equity in the courts of the United States was in the following words:

No demurrer or plea shall be allowed to be filed to any bill unless upon certificate of counsel that in his opinion it is well founded in point of law and supported by affidavit of the defendant; that it is not interposed for delay.

One year later, namely, November 4, 1912, the United States Supreme Court, by rule 29, Equity Rules, abolished demurrers and pleas.

The said demurrer filed by said defendant, Andrews, should have been dismissed as fatally defective by said Thayer by reason of non-compliance with said rule 31. (*National Bank v. Ins. Co.*, 104 U. S., 54.)

Pending the hearing on the said demurrer, the said Rufus H. Thayer was insulting, contemptuous, and most arbitrary, saying he would not have granted leave to amend had not defendant consented, and when plaintiff's attorney had occasion to use the law library of the said court, the property of the United States, refused to permit its use in the evening unless a court attendant was well paid by the plaintiff to be present during its use.

On the Bund, the main thoroughfare of Shanghai, Mr. R. S. Dugal, one of the employees of the said defendant, H. W. Andrews, offered to make a bet, and did make a bet, that notwithstanding the validity and justness of the plaintiff's judgment against his employer, and that it was still in force, that the said Rufus H. Thayer, as judge of the United States Court for China, would not enforce said judgment, intimating that the said Thayer had been bribed to rule against the plaintiff and to dismiss his said bill.

The indebtedness of said defendant Andrews to said plaintiff as evidenced by said judgment with interest to date of filing said bill was \$8,213.66 lawful money of the United States, or taels 13,689.44 Shanghai Sycee, at exchange \$0.60.

The said Thayer heard arguments on the said demurrer on October 31, 1911, and withheld his decision thereon until the 6th of the follow-

ing month, so timing his decision as to allow the judgment debtor to take a boat that same night and sail the next day for Yokohama, Japan, which he did.

Notwithstanding the fact that the plaintiff in his bill set up a sum certain of money due, to wit, a judgment of the United States Consular Court, to the jurisdiction of which court the said United States Court for China succeeded, and succeeded to all its unfinished business, judgments, documents, and records, of said court; and further set up the fact that the said defendant had fraudulently transferred his property to defeat payment of said judgment; that the records of said consular court show that said plaintiff had in that court sought execution of said judgment in vain; that the said plaintiff set up grounds for an accounting and prayed for an accounting; and had alleged that said defendant was temporarily within the jurisdiction of said United States Court for China and was about to leave the jurisdiction of said court to evade payment of said judgment, and further prayed for discovery of assets, which said allegations were duly supported by affidavit and constituted ample grounds to give said court jurisdiction of said bill in equity; and notwithstanding the fact that the then twenty-first rule of the Rules of Practice of the Courts of Equity of the United States, provides as follows, to wit:

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, * * * also what is commonly called the jurisdictional clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable, therefore,

the said Thayer did decide, contrary to said rule, that said bill was demurrable, sustained said demurrer, which was permitted to be filed contrary to said rule 31 of the equity rules, and dismissed said bill.

The said defendant, H. W. Andrews, the same day the said decision was rendered, to wit, the 6th day of November, 1911, went aboard the German ship *Prinzess Alice*, of the Nord Deutscher Lloyd, and sailed the next day for Yokohama, Japan.

After sustaining said demurrer, the said Thayer ironically said:

The present bill is struck out, and it is for the plaintiff to determine his next step.

A copy of said judgment sustaining said demurrer is annexed hereto. (See Exhibit No. 8, pp. 15 to 21 thereof.)

Upon rendering said judgment the said Thayer knew that the defendant would leave at once the jurisdiction of the court, by boarding the said German passenger ship lying in the harbor, and sail the next day for Japan, and thus prevent any "next step," as he thus placed himself beyond the jurisdiction of the court, and that therefore an appeal to the United States Circuit Court of Appeals at San Francisco from the said decision would be futile, as the United States has no extraterritorial jurisdiction in Japan.

Thus it will be seen that a judgment of the United States consular court, which court was succeeded in its jurisdiction by the United States Court for China, on which judgment the plaintiff sought execution in said consular court in vain and exhausted every legal remedy to enforce said judgment, was rendered futile because said Thayer refused to entertain jurisdiction of a bill in equity setting forth jurisdictional facts to give said jurisdiction.

Aside from the equity jurisdiction laid for discovery and for the writ of *ne exeat*, the further ground for an accounting in equity was laid in said bill. The law, in brief, on this subject is as follows:

In many cases it appears that the equitable jurisdiction over matters of account is exercised not primarily upon the ground of account alone, but because there is involved some recognized head of equitable jurisdiction, as in the instance of the jurisdiction which such courts possess and exercise over express, implied, and constructive trusts and frauds. (See 1 Cyc., 417.)

Another general principle is that when a court of equity once acquires jurisdiction upon equitable grounds it will proceed to do complete justice and administer full relief. To this end it will order an accounting, and will settle the whole controversy, even to the extent of adjudicating matters of purely legal cognizance. And, on the other hand, where defendant is called on to account in a proper case, the court, having obtained jurisdiction for this purpose, will take cognizance of the whole matter involved and necessary incidental relief will be granted. (See vol. 1 Cyc., 418.)

Further, equity assumes jurisdiction in matters of account to prevent a multiplicity of suits. (See vol. 1 Cyc., 418, and cases therein cited.)

So uniformly have courts of equity assumed jurisdiction of matters of account that the rule in general terms is now established that they have concurrent jurisdiction with courts of law in all matters of account. (See vol. 1 Cyc., 418, and numerous cases therein cited.)

In cases arising *ex contractu* or *quasi ex contractu*, but involving accounts, courts of equity have exercised a general jurisdiction; among which, arising from the cognizance of this court, are agencies, claims against consignees, receivers, and stewards. Where the contract fixes no time for its termination it will be construed as requiring an accounting at reasonable periods, and the reasonableness of such periods will be determined by the previous acts of the parties. (See vol. 1, Cyc., 419.)

In all cases in which an action of account would have been a proper remedy at law the jurisdiction of a court of equity over the matter involved seems to be undoubted. (See vol. 1, Cyc., 419, and numerous cases therein cited.)

This decision of said Rufus H. Thayer in the case of *Nee Chang Mow v. H. W. Andrews*, holds in effect that a judgment debtor who has fraudulently transferred his property to defraud creditors and who is about to leave the jurisdiction of the court to evade payment of said judgment, after the judgment creditor has exhausted all legal remedies, can not be restrained by *ne exeat*, or a writ of *habeas corpus*. Thayer's refusal to grant the writ of *habeas corpus*, given in effect in the *Sue Tusher* case, holds in effect that the court has the authority to arrest a young woman for alleged debt, on the uncorroborated statement of a Chinese tailor that the said young woman was about to leave the jurisdiction of said court with a large sum of money on a tailor's bill, regardless of the fact that the charge against said young woman was "a frame-up" pure and simple—in other words, a conspiracy to hold her in Shanghai for an unlawful purpose.

SPECIFICATION No. 6.

That the said Rufus H. Thayer at Shanghai, in the Republic of China, to wit, on the 28th day of January, 1911, being then and there judge of the United States Court for China, threatened to punish for contempt of court and to disbar an attorney at law who filed in said court a charge of perjury against John M. Darrah while an acting marshal of said court and a charge of making false accounts of fees and costs alleged to have been paid to A. E. Louro in the case of the United States *v.* Price.

The said A. E. Louro duly made an affidavit to said charge on the said 28th day of January, 1911, before James B. Davies, clerk of the said court, and said charge was filed as aforesaid by said Mr. E. A. Louro's attorney.

The said Thayer lost his temper and in an angry and loud voice contemptuously and unlawfully asserted that his court was being unlawfully resorted to for the purpose of bringing criminal charges against an ex-officer of said court, and further contemptuously and unlawfully said that he would not permit it and if persisted in the said attorney would be punished for contempt of court and disbarred.

Further, the said Thayer unlawfully directed the said clerk of court to return said charge to said attorney, which was done. See original charge and letter of transmittal from said clerk inclosing said charge to said attorney (Exhibit No. 7, pp. 1 and 2 thereof).

On or about the 1st of February, 1911, another and more elaborate charge was filed against the said John M. Darrah in the clerk's office of said court. Under threats of said Thayer, more vigorous in character than those he made on the 28th of January, 1911, the said second charge was withdrawn and surrendered into the hands of the said Thayer.

NOTES ON LAW, FACTS, AND SIMILAR ACTS.

The said Thayer in far-off China, 10,000 miles from Washington City, D. C., and 7,000 from the United States circuit court of appeals in San Francisco, Cal., unscrupulously prostituted the powers of his high office with impunity. He unscrupulously used his power to protect certain grafting and otherwise corrupt officers of his court against whom certain actions were sought to be brought, and on the other hand he unscrupulously used the power of his office, following in the footsteps of his notorious predecessor, John Goodnow, United States consul general and judge of the consular court, to bring false charges against those who lawfully excepted to the aforesaid unlawful acts.

These false charges were quite as raw and audaciously brought as any "frame ups" resorted to by the grafting police officials of New York City, as alleged in their trials recently.

The said Thayer, by unlawfully denying jury trials to citizens charged with crime, constitutes himself a jury and a judge of facts as well as of law. Citizens are convicted without due process of law and sent to the penitentiary. Hence he is all powerful.

The nearest appellate court is in San Francisco, the United States circuit court of appeals, 7,000 miles away. This can only be reached at great expense and by many months' delay by reason of the great

distance. Thayer knows this and unhesitatingly takes advantage of it. He unscrupulously throws every possible obstacle in the way of those who seek to appeal from his decision to the said appellate court.

This is done by his refusal to permit copies to be made of the records of a case as filed in the clerk's office, by a refusal of a stay of execution in a criminal case after a writ of error was duly drawn and filed in the said clerk's office, and by denying the right to a consultation between the convicted appellant and his attorney before the said appellant was transported to the United States to serve a five-year term in the Federal penitentiary at Fort Leavenworth. The unlawful acts herein referred to were most pronounced in the case of the United States *v.* Frederick C. Faulkner.

The said Faulkner was clerk of the United States legation at Peking. He had served through the Boxer uprising as sergeant in the Marine Corps and had received an honorable discharge therefrom.

He was charged by Henry P. Fletcher, secretary of legation, with embezzlement. He pleaded "not guilty" and demanded a jury trial, which was denied him.

The said Thayer and the said Fletcher were constantly in each other's company during the trial of said case, walking to and from court together. Faulkner was railroaded to the penitentiary by said Thayer.

The trial was at Tientsin, China. After he was charged there and held for trial, he was sent to the military prison of the said legation at Peking and placed in solitary confinement under an armed guard. It was only with the greatest difficulty and after traveling many miles to Peking from Tientsin was counsel able to see him.

After his conviction he was taken to Shanghai, China, and here counsel was not permitted to see him until 20 minutes before he was taken to the ship to be transported to San Francisco and thence to said military prison at Fort Leavenworth.

In striking contrast to the said Faulkner case is the case of the United States *v.* George Collinwood, charged with embezzlement at Tientsin of about the same amount that Faulkner was alleged to have embezzled, and tried at Shanghai on the 21st of March, 1911.

The said Thayer was about to leave China and his post of duty therein for five or six months, as usual every year, and not wishing to delay his departure from China by going to Tientsin and trying said case, it was agreed that the said Collinwood should consent to be tried at Shanghai instead of at Tientsin; that is, to consent to plead guilty at Shanghai. In consideration thereof he was to be imprisoned only three months in the consular jail at Shanghai. He did plead guilty to embezzlement as charged, and was only sentenced to three months' imprisonment in the said consular jail.

In the one case a young man of high standing in the community, the clerk of the legation at Peking, who protested his innocence and demanded due process of law—that is, a jury trial—angered the said Thayer by so doing and was sentenced to five years in the penitentiary, while on the other hand a man who did not hold the high standing in the community that Faulkner did, and who was a confessed embezzler, but who did not anger said Thayer and who agreed to save said Thayer a voyage to Tientsin, and to plead guilty in Shanghai, was only sentenced to three months' (90 days) imprisonment in the

said consular jail at said Shanghai. (See North China Herald, vol. 98, N. S., p. 743, Mar. 24, 1911—a weekly periodical published at Shanghai, China, on file in the Library of Congress.)

Having shown that said Thayer refused to permit a charge to be filed against an officer of his court, to wit, against John M. Darrah, acting marshal, it may be interesting to cite another case. A young European woman, residing in Shanghai, sought through her attorney, Mr. George Musso, a barrister, to prosecute Arthur Bossett, district attorney of the United States Court for China, for assault.

The court refused to permit the said charge to be filed in the clerk's office, and stated *ex parte* that the said young woman was of the demimonde class, and invited the assault, if there was any.

The said Arthur Bassett shortly after said alleged assault resigned and left Shanghai.

In support of the charge that said Thayer unscrupulously prostituted his high office by using the power thereof to oppress and crush those who opposed his unlawful acts, and especially excepted to his long absences from China in Japan and Europe for months at a time, might be mentioned the case of an attorney, who in order to obtain an order of court, was obliged to take a ship from Shanghai, China, to Kobe, Japan (see Exhibit No. 9 hereto annexed), and from this point take guides to the top of Mount Rokkasan. Here he found that the said Thayer had leased a bungalow and was spending the spring, summer, and part of the fall months, without leave of absence, without knowledge of the authorities in Washington, and at the same time having receipts for his salary made and dated in Shanghai, and bearing his signature, thus conveying to the Auditor for the State and Other Departments the impression that said Thayer was at his post of duty in China, instead of basking in the sunshine and reveling in the beauties of that picturesque spot of far-away Japan.

The said Thayer was being paid by the Government at the annual rate of \$8,000 lawful money of the United States, which has in China the purchasing power of \$25,000 in the United States. He arrived in China about the middle of March, 1909, yet in June of the same year, a little over two months later, he has located himself in the mountains of Japan until the following fall, instead of remaining in China and attending to pressing business of his court.

Upon the said attorney complaining of the unnecessary expense he was put to in going to and from Japan for said order and reminding said Thayer that his post of duty was in China, not Japan, the said Thayer became exceedingly angry, threatening contempt of court proceedings, which could not be had in Japan.

But upon the very first case said attorney had before said Thayer in Shanghai, the case of *Barkovitz v. Katz*, said Thayer fined him \$25 lawful money of the United States or 10 days in jail, although section 4104 Revised Statutes limited the imprisonment to 24 hours, and suspended him from practice on the pretext that a certain petition for a rehearing filed by said attorney in said case was contemptuous, at the same time denying the right of the said attorney to have a certified copy of said petition or to appear in said court on his own behalf to file a motion for appeal or to take any steps toward an appeal until the said attorney had first apologized to said Thayer as said judge.

Having no redress except at enormous cost and many months' delay and many thousands of miles of travel to and from San Francisco, about 14,000 miles, the said attorney paid said fine and made said apology.

SPECIFICATION NO. 7.

That the said Rufus H. Thayer, at Tientsin, in the Republic of China, being then and there judge of the United States Court for China, did on the 31st day of December, 1909, commit the offense of malfeasance in office in that he contemptuously and unlawfully usurped the province of a jury and denied due process of law in the case of the United States against Frederick C. Faulkner, a former clerk of the United States Legation, charged while acting as such clerk with embezzlement by the secretary of said legation—one Fletcher. During the whole course of the trial of said Faulkner the said Judge Thayer was in the company and society of the said complaining witness, Fletcher, and walked to and from the trial at the consulate with him. That said Thayer was biased and prejudiced against said Faulkner, and sentenced him to five years in the penitentiary at Fort Leavenworth. That said Thayer refused a stay of execution of said sentence, though said Faulkner duly gave notice of appeal, filed with said court a writ of error to the Circuit Court of Appeals for the Ninth Circuit at San Francisco with his assignment of errors, bill of exceptions, and citation, and duly served copies thereof upon the district attorney. That thereafter the said Faulkner was sent under guard from Tientsin to Shanghai, where his counsel sought a consultation with him, which was denied by said Thayer at said Thayer's instructions, until a few minutes before said Faulkner was put upon a ship to be transported to San Francisco to serve a term of five years in the said penitentiary at Fort Leavenworth.

NOTES ON LAW AND FACTS UNDER SPECIFICATION NO. 7.

The said Faulkner was a member of an eminently respectable Kentucky family, a man who served with honor and distinction in the Marine Corps as a sergeant and fought his way with that corps from Tientsin to Peking during the Boxer uprising, and later received an honorable discharge.

Upon learning that a charge of embezzlement had been filed against him—he was on leave of absence at the time and not in China nor within the jurisdiction of said United States Court for China—he traveled several thousand miles to return to China and undergo trial.

From the time he surrendered himself to the time he was transported, as aforesaid, he was treated by the order of said Thayer as a most desperate outlaw, part of the time before his trial being placed in solitary confinement in the military prison at Peking, though he was not in the military service.

The said Thayer has usurped the functions of a jury in other cases of Americans charged with felony and denied said Americans due process of law in their trials, and, as in the Faulkner case, has sentenced them to the penitentiary for a long term of years.

While said Thayer was in Europe five and six months at a time without leave of absence, and away from his post of duty for that

time without the knowledge of the Auditor for the State and Other Departments, and without the knowledge of the Department of State, drawing his salary at the rate of \$8,000 a year on vouchers bearing date Shanghai, China, thus giving and intending to give the impression that he was at his post of duty in China, a young man, one Frank W. Hadley, a corrupt official, not a lawyer, presided as judge of the United States consular court.

This man was not competent to practice before said court under its rules, yet presided as its judge. He held citizens to answer to the United States Court for China on felony charges, and held them in the consular jail during the deadly summer in Shanghai, without the necessary exercise a prisoner should take in that climate.

This jail was in a building, to wit, No. 15 Whangpoo Road, Shanghai, China, for which the market rent was \$45 a month for the whole building, but which Amos P. Wilder, consul general, leased in his own name, in his private capacity, and then falsely charged the Government \$100 a month, falsely representing it to be the true rent for jail purposes, and then only gave partly said building for that purpose.

The said Hadley had knowledge that the said false claims for rent were made by said Wilder against the Government, and further knew that the men whom he held for trial before the said Thayer would be confined in the attic of said building during the hot season, when Asiatic cholera and other deadly Asiatic diseases were rampant, the said prisoners awaiting trial in that deadly climate in said attic at the pleasure of said Thayer's return from Europe in the late fall.

The fact that citizens of the United States in China charged with a felony are entitled to a jury trial may be seen from the following sections of the Revised Statutes and from the act creating the United States court for China.

By section 5 of the act of June 30, 1906 (34 Stat. L., 814), creating said court the provisions of sections 4106 and 4107 of the Revised Statutes are repealed.

These sections provided that associates or assessors, not exceeding four in criminal cases and three in civil, should sit with consuls in trying cases where the fine exceeds \$100 or the term of imprisonment exceeds sixty days, or in civil cases if the damages exceed \$500.

In 1890 the Supreme Court held in the Ross case (140 U. S., 470), that as under said sections 4106 and 4107 [the defendant] "will have all the provisions necessary to secure a fair trial before the consul and his associates," Congress had provided these associates in lieu of a jury and that the Constitution did not extend beyond the territorial boundaries of the United States.

But by the said repeal of said sections 4106 and 4107, Revised Statutes, this substitution of associates or assessors for a jury is done away with, and under a well known rule of statutory construction the right which citizens had under the laws of the United States, made applicable to citizens in China, comes into full force again.

Aside from this the act creating the said court provides, by section 5 thereof, "That the procedure of said court shall be in accordance, as far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States."

While section 4 of said act provides that if "such laws are deficient in the provisions necessary to furnish suitable remedies, the common

law, and the law as established by the decisions of the courts of the United States shall be applied by said court."

It can not be denied that under the common law a jury trial was a right guaranteed to anyone charged with a felony; further, a person could not be attacked in person or property without a jury trial. Indeed this was a right guaranteed as such by the Magna Charta. (Proffatt Jury Tr., sec. 24.)

If it is claimed that the laws of the United States do not specifically provide for jury trials in China, and that the laws as they now stand "are deficient in the provisions necessary to furnish suitable remedies," then certainly under said section 4 of said act the common law, which is thereby made applicable, furnishes "suitable remedies," for the reason that the common law furnishes the remedy of a jury trial as aforesaid.

It is a well-settled rule of statutory construction that "to repeal a statute will revive the common law." (Sutherland on Statutory Construction, 228; *Mathewson v. Phoenix Iron Foundry*, 20 Fed. Rep., 281; *State v. Rollins*, 8 N. H., 550; *Gray v. Obear*, 54 Ga., 231; *Lowenberg v. People*, 27 N. Y., 336; see *Borsmare v. His Creditors*, 8 La., 315.)

Sections 4106 and 4107 Revised Statutes, providing a substitute for a jury trial, having been repealed by the act of June 30, 1906 (34 Stat. L., 814), it follows therefore that the common-law remedy of a jury trial is revived, because said act specifically provides by section 4 thereof that the common law shall be applied and the law as established by the decisions of the courts of the United States.

Can it even be claimed that "the law as established by the decisions of the courts of the United States" do not provide for jury trials?

The said law certainly provides for jury trials. Therefore it follows that under the law creating said court jury trial is provided for citizens of the United States in China and that to attack a citizen in his property or person without a jury trial is to do so without due process of law.

Further, the enactment of said provisions of said section 4 of said act is an affirmative enactment of a new rule in place of the said repealed sections 4106 and 4107 of the Revised Statutes. Under another rule of statutory construction, an affirmative enactment of a new rule implies a negative of whatever is not included, or is different; and if by the language used a thing is limited to be done in a particular form or manner, it includes a negative that it shall not be done otherwise. (*Wells v. Supervisors*, 102 U. S., 625; *Chandler v. Hanna*, 73 Ala., 390.)

An intention will not be ascribed to the lawmaking power to establish conflicting and hostile systems upon the same subject or to leave in force provisions of law by which the later will of the legislature may be thwarted and overthrown. Such a result would render legislation a useless and idle ceremony and subject the law to the reproach of uncertainty and unintelligibility. (*Lyddy v. Long Island City*, 104 N. Y., 218.)

SPECIFICATION No. 8.

That the said Rufus H. Thayer, at Shanghai, in China, being then and there judge of the United States Court for China, did, in a letter addressed to the Secretary of State, indorsing Frank Erasmus Hinckley for the office of district attorney of the United States Court for China, falsely state that the said Hinckley was a well-equipped lawyer, whereas in truth and in fact, as the said Rufus H. Thayer well knew, the said Hinckley was not a lawyer; that he had not been admitted in the United States to practice in any court of the United States, Federal or State; that he had not graduated at a law school, nor had he served in a lawyer's office, nor had he ever practiced law in any part of the United States, or elsewhere. Well knowing these facts, and knowing and being judicially charged with the knowledge by the act creating said court that said district attorney "shall be a lawyer of good standing and experience," as a prerequisite for the said appointment and confirmation, the said Rufus H. Thayer nevertheless thus falsely deceived the said Secretary of State and the Judiciary Committee of the Senate, which naturally supposed that the said Hinckley was an experienced lawyer of good standing as required by the statute creating said court. (34 Stat. L., 816, sec. 6 of the act of June 30, 1906.) Further, that under said section 6 of said act the said Rufus H. Thayer himself is not an experienced lawyer within the meaning of said section, which contemplates that the judge of said court shall be a man learned in the law and a lawyer of experience.

NOTES ON FACTS UNDER SPECIFICATION NO. 8.

Thayer does not come within said section for the reasons following, namely:

First. His only study qualifying his admission to practice law was a two-year law course at a night school in Washington City, from 1872 to 1873, then known as the Columbian Law School, while during said two years he was a clerk in the Treasury Department, and continued in the service of the said department as a clerk for over 13 years thereafter, thus making over 15 years as clerk in said department, during which time he did not and could not practice law and gain experience for the reason that all his time was necessarily given to the said department in his position as clerk therein. The State Department Directory for 1912 states that he, the said Rufus H. Thayer, resigned his position in the Treasury Department during Cleveland's first administration and entered upon the practice of the law—implying that he did not care to work under a Democratic administration. Instead of entering upon the practice of the law at that time, he worked for several years as clerk in several positions, and then entered upon the practice of the law in the District of Columbia, over 15 years after his two-year night-school law course, and this practice was before the departments and the Court of Claims.

It is respectfully submitted such a law course, however thorough a two-year night-school course might be, while the student is a clerk employed all day in the Treasury Department, does not equip a man for a judgeship who does not put into practice the knowledge thus

gained until 15 years later. Especially it does not equip him for a judgeship of a court whose jurisdiction involves most complicated questions of private international law, and whose salary is \$8,000 gold a year, nearly as much as a Justice of the Supreme Court of the United States, for which salary the best-trained legal minds can be obtained.

Further the said Rufus H. Thayer lacks that judicial temperament necessary for a judgeship of a court having an extraterritorial jurisdiction, or in fact of any jurisdiction. This fact is demonstrated, it is respectfully submitted, by the foregoing and following specifications. For further facts under above specification No. 8 see the credentials of said Rufus H. Thayer as clerk in the Treasury Department, which are of record in the Appointment Division of said department, in support of the above allegations as to his law preparations for the legal profession.

SPECIFICATION NO. 9.

That the said Rufus H. Thayer, at Shanghai, in the Republic of China, being then and there judge of the United States Court for China, did knowingly, willfully, and unlawfully, during and between the quarter ending June 30, 1909, and the quarter ending September 30, 1912, usurp a probate jurisdiction over the estates of citizens of the United States dying in China, in violation of sections 1709, 1710, and 1711 of the Revised Statutes, and in violation of the act which created said United States Court for China, which act specifically provides that said court shall exercise only a supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to decedents in China. (34 Stat. L., 815, sec. 2.)

Further, that said Thayer was absent from his post of duty in China for five and six months at a time without leave granted, during which time he was in Japan, Europe, and America, and that while thus absent he conducted his alleged probate court by cable.

That between the aforesaid dates the said Rufus H. Thayer was guilty of malfeasance in office by reason of a gross abuse of power whereby he usurped a probate jurisdiction, as above set forth, thereby causing legal heirs or next of kin residing in the United States and within the domicile of the intestate's State to lose large sums of money which would otherwise come to them by descent under the probate laws of intestate's State. This contrary to the oath of his high office and in violation of the laws of the United States.

NOTES ON THE LAW AND FACTS UNDER SPECIFICATION NO. 9.

LAW.—Herein are set forth the law, the facts leading up to this specification, and the history of the laws of the United States, and of the Consular Regulations and Instructions, which impose upon our consuls the duty to conserve the estates of citizens dying intestate in China, and which impose upon the judge of the United States court for China the duty to exercise a supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to decedents in China.

Almost at the very birth of our Nation, 3 years after the ratification of the Federal Constitution by the State conventions, and 3 years after the first session of Congress—to be more specific, on the 14th day of April, 1792—121 years ago, on the 14th day of April, Congress by a mandatory act made it the duty of consuls and vice consuls, where the laws of the country permit, to take possession of the personal estate of any citizen who shall die in their consulate, leaving there no legal representative, partner in trade, or trustee by him appointed to take care of his effects. (See vol. 1, Stat. L., ch. 24, p. 255.)

This mandatory act has never been repealed. It is known in the Revised Statutes as sections 1709 and 1710, and is in the following words, to wit:

SEC. 1709. It shall be the duty of consuls and vice consuls, where the laws of the country permit:

First. To take possession of the personal estate left by any citizen of the United States, other than seamen belonging to any vessel, who shall die within their consulate, leaving there no legal representative, partner in trade, or trustee by him appointed to take care of his effects.

Second. To inventory the same with the assistance of two merchants of the United States, or, for want of them, any others at their choice.

Third. To collect the debts due the deceased in the country where he died, and pay the debts due from his estate which he shall have there contracted.

Fourth. To sell at auction, after reasonable public notice, such part of the estate as shall be of a perishable nature, and such further part, if any, as shall be necessary for the payment of his debts, and, at the expiration of one year from his decease, the residue.

Fifth. To transmit the balance of the estate to the Treasury of the United States, to be holden in trust for the legal claimant; except that if at any time before such transmission the legal representative of the deceased shall appear and demand his effects in their hands they shall deliver them up, being paid their fees, and shall cease their proceedings.

SEC. 1710. For the information of the representative of the deceased, the consul or vice consul, in the settlement of his estate, shall immediately notify his death in one of the gazettes published in the consulate and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased, taken as before directed.

For these services a fee, which is official, is fixed by the President of the United States, by authority of law (see sec. 1745, Rev. Stat.).

The President is authorized to prescribe such regulations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States in relation to the duties of all consular officers. (See sec. 1752, Rev. Stat.)

The President has prescribed a table of official fees to be charged by consuls for their services. The fee for settling an estate (i. e., for performing the duties prescribed by sections 1709 and 1710, Revised Statutes), is fixed by a tariff of official fees, revised to take effect November 1, 1906, amended by Executive order of June 7, 1909, published in the "Diplomatic and Consular Service of the United States," corrected to March 14, 1913, page 15 thereof, fee No. 12. This fee is \$2 for each \$100 of value or fraction thereof.

If part of such estate shall be delivered over before final settlement, \$1 for each \$100 of value or fraction thereof, to be charged on the part so delivered over *as is not in money*, and \$2 for each \$100 of value or fraction thereof on the gross amount of the residue.

If among the effects of the deceased are found certificates of foreign stocks, loans, or other property, \$1 for each \$100 of value or fraction thereof on the amount thereof.

No charge will be made for placing the official seal upon the personal property or effects of such deceased citizen, or for breaking or removing the seals. (Fee No. 12, tariff of official fees in force June 7, 1909.)

Before entering upon the duties of the office of consul general, at Shanghai, Amos P. Wilder took and subscribed the oath prescribed by section 1757, Revised Statutes (23 Stat. L., 21), and executed a bond in a penal sum not less than his annual salary (see Rev. Stat. 1697), which bond is deposited with the Secretary of the Treasury. (Rev. Stats. 1697-1698.)

By his said oath of office the said Amos P. Wilder, among other things, swore and subscribed as follows: "I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Having taken this oath of office, and having been instructed in "the duties of the office" on which he was about to enter, in that he was given copies of all circulars of instructions relating to his office to date of appointment, as well as a copy of the United States Consular Regulations of 1896, he forthwith proceeded to violate his oath.

A copy of said regulations is in the library of the United States consulate at Shanghai, which regulations set forth in detail the duties of the office of consul general, and especially in detail his duties in the settlement of estates of citizens dying intestate in China.

In said consular regulations are set forth a copy of said sections 1709 and 1710, Revised Statutes. See Consular Regulations, 1896, page 345, paragraphs 804 and 805; in fact, all the statutes in relation to consuls, and also a copy of an excerpt from the opinion of Attorney General Cushing (7 Op. Att. Gen., 274), in which it is stated that the consul's "duties are restricted to guarding and collecting the effects, and to transmitting them to the United States, or to aid others in so guarding, collecting, and transmitting them, to be disposed of pursuant to the law of the decedent's State." (See United States Consular Regulations, 1896, p. 161, par. 409.)

Notwithstanding his solemn oath to "faithfully discharge the duties of the office" of consul general, his instructions as to those duties having been given him as aforesaid, he willfully and unlawfully refused to perform said duties imposed upon him in relation to the settlement of estates of citizens dying in China, whereby the said fees prescribed by the United States during the term of office of said Amos P. Wilder were not collected by him and consequently no returns thereof were made by him.

The said Amos P. Wilder, as well as said Rufus H. Thayer, knows, and is charged with judicial knowledge, that the United States as a Nation, apart from the individual States, has not made any national law defining what constitutes the due execution of a will, the number of witnesses necessary to constitute a valid will, the manner of signing or sealing, etc. The United States in this respect has never made any such law, as it has never made any law of divorce. Such laws relating to wills, executors, administrators, and divorce are reserved exclusively to the States.

But as the United States Court for China has failed to exercise a supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to decedents in China, which supervisory control is imposed upon the court by the act creating the court, and the court having usurped an alleged probate jurisdiction of all estates over \$500, leaving all below that amount to said Consul General Amos P. Wilder, or his vice consul, no inventories of estates have been sent to the Department of State, or to the auditor for that department, and hence the accounting officers of the Government, as well as the creditors and legal heirs in the United States, are at the mercy of said court.

Such a condition is in plain violation of the laws of the United States, as set forth in the Revised Statutes, sections 1709-1710; the act of June 30, 1906 (34 Stat. L., 814), creating said United States Court for China, and the United States Consular Regulations of 1896.

The Department of State from its organization and the first appointment of consuls to the present time has sent written instructions to its consuls for their guidance.

These instructions are preserved in the Library of Congress. They were published and promulgated as follows, namely:

1. Consular Instructions, circulars, 1801 to 1815, bound in one volume: In those days our consuls were required to wear a uniform, which was duly specified in every detail. With this uniform went a black cocked hat, cockade, small sword, shoe, and knee buckles of gold or gilt. (Circular of 8th Aug., 1815.)

2. The report of the Secretary of State, Edw. Livingston, sent to the Senate March 2, 1833, by President Andrew Jackson, containing general instructions to consuls.

3. The consular regulations of 1855, sent to consuls under a circular dated June 22, 1855, by W. L. Marcy, Secretary of State.

The duties of consuls in relation to intestates' estates is set forth in this volume in great detail. (See pp. 28-37 thereof.)

Under these Consular Instructions of 1855 it is provided *inter alia*, in relation to intestate's estates, page 29, paragraphs 70 and 71, as follows, namely:

70. An inventory must be taken of all the effects of the deceased, with the assistance of two merchants of the United States. * * *

71. In performing this branch of the consular duty great attention is required; merchants, if possible of great respectability, are to be selected as the assistants of the consul. Although appraisement is not mentioned in the act, the *consuls are instructed* to have the apparent value of each article affixed to it.

In a word, the Consular Regulations of 1855, chapter 6, pages 28 to 37 thereof, contain an excellent brief on the subject of the duty of consuls in relation to the effects or estate of an intestate in China, where the laws of that country permit the consuls to comply with sections 1709 and 1710, Revised Statutes, and the said regulations in relation thereto.

4. This was followed by the regulations of 1870, prescribed by President Grant.

5. The next official edition of the consular regulations was prescribed and promulgated by President Grant, September 1, 1874, the same having been transmitted to the consular officers by Secretary of State Hamilton Fish under the same date.

6. The consular regulations next to issue were those prescribed by President Garfield May 1, 1881, and sent by the then Secretary of State, James G. Blaine, to our consular officers under the same date.

7. President Cleveland, under date of February 3, 1888, prescribed the next issue of the revised consular regulations and tariff of official fees, and these were sent to our consular officers by Secretary of State T. F. Bayard under same date.

8. The last bound collection of consular regulations issued was prescribed by President Cleveland, under date of Executive Mansion, Washington, December 31, 1896, and was sent to our consular officers under same date by Secretary of State Richard Olney. Since then certain circular instructions in pamphlet form have been sent consular officers from time to time.

In 1908 there was published by the Department of State a Digest of Circular Instructions to Consular Officers, January 1, 1897, to May 25, 1908.

In this digest, page 46, it is stated that the—

duty of looking after affairs of deceased citizens is regarded as most important, and department enjoins especial care and promptness in all matters connected therewith. (Circular Aug. 30, 1900.)

Further, on same page, is stated that—

Inventory of effects to be forwarded with notice of death to Department of State. (Circular July 20, 1898.)

In all of the aforesaid consular regulations the duty is imposed upon consuls to conserve the estates of intestates, as set forth in sections 1709 and 1710, Revised Statutes. These regulations, which have the force of law, as provided by section 1752, Revised Statutes, are still in force.

The law creating said United States Court for China (34 Stat. L., 814) imposing upon that court the duty of “a *supervisory* control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China,” is still in force. Hence it is impossible to see what excuse said Amos P. Wilder can give for his gross neglect of duty, nor can it be seen what reason the said Rufus H. Thayer can give for his gross abuse of power in usurping a so-called probate jurisdiction; defining what constitutes a due execution of a will, who is entitled to be administrator, the succession of property, etc., to the exclusion of the law of the intestate’s domicile in his home State, his creditors or legal heirs or next of kin therein.

Under section 1752 of the Revised Statutes—

The President is authorized to prescribe such regulations and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe-keeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions.

The above section 1752, Revised Statutes, is set forth in the United States Consular Regulations of 1896 as paragraph 847, page 355, thereof, said regulations being House Document No. 303, Fifty-

fourth Congress, second session. Copies of same are in the hands of said Wilder and Thayer.

The official fees above referred to are authorized by section 1745, Revised Statutes, which is in the following words:

SEC. 1745. The President is authorized to prescribe, from time to time, the rates or tariff of fees to be charged for official services and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several legations, consulates, and commercial agencies, and to adapt the same, by such differences as may be necessary or proper, to each legation, consulate, or commercial agency; *and it shall be the duty of all officers and persons connected with such legations, consulates, or commercial agencies to collect for such official services such and only such fees as may be prescribed for their respective legations, consulates, and commercial agencies, and such rates or tariffs shall be reported annually to Congress.*

The above section 1745, Revised Statutes, is set forth in the United States Consular Regulations of 1896 as paragraph 840, page 354 thereof.

It is thus seen that said sections 1745 and 1752, Revised Statutes, were brought to the attention of said Consul General Amos P. Wilder and of the said Judge Rufus H. Thayer, in said regulations; that said Wilder grossly neglected to faithfully perform the duties of his office in not carrying out said regulations, to wit, in not administering the estate of intestates and in not collecting the official fees on said estates, wherefore the said Wilder has brought himself within section 1735 of the Revised Statutes and is subject to removal from office, while the said Thayer has made himself liable to removal from his high office as judge by the President for cause as well as subjected himself to impeachment on this ground as well as those stated in the foregoing specifications.

China in its first treaty with us in 1844 granted us extraterritorial jurisdiction within her borders—that is, she granted us the right to take jurisdiction of all claims made against citizens of the United States in China either by fellow citizens or by subjects of the Emperor of China.

Under this treaty the act of Congress of 1792, sections 1709 and 1710 of the Revised Statutes, was made applicable to our consuls in China, and in taking advantage of the extraterritorial jurisdiction thus granted Congress on the 22d of June, 1860 (Stat. L., vol. 12, p. 72), invested our consuls in that country with certain judicial powers in civil and in criminal cases set forth in sections 4083–4119, Revised Statutes.

In the year 1864 Mr. Anson Burlingame, our minister accredited to Peking, China, copied the consular court regulations which had been promulgated some years before by our minister in Constantinople, Turkey, known as the Ottoman dominions, and made these regulations applicable to the consular courts organized in 1864 in China. (See dispatch of Anson Burlingame to Secretary of State, Diplomatic Correspondence, United States; also compare Appendix 7, p. 114 et seq., with Appendix 8, p. 148 et seq., of the Report of Hon. John Hay, Secretary of State, upon a Tour of Consular Inspection in Asia, by Herbert H. D. Peirce, Third Assistant Secretary of State, Washington, Government Printing Office, 1904.)

Our consuls in China from the first time we ever accredited consuls to that country to 1898 never usurped the jurisdiction of a probate court, such as we understand the term probate jurisdiction in the

respective States; neither did the said consular courts, either directly or indirectly.

Under the said act of 1792 (secs. 1709, 1710, Rev. Stat.) our consuls in China are given a jurisdiction in preserving the personal estate of a citizen dying intestate there, resembling somewhat the nature of an auxiliary probate jurisdiction in that they are to conserve the estate as set forth in said sections 1709 and 1710, and no further; that is, they collect the assets, after paying debts, and transmit the same to the Treasurer of the United States, to be paid by him, by warrant, to the administrator appointed by the probate court of the State within the jurisdiction of which the intestate had his domicile in law, a domicile which an American citizen could not acquire in China. (See Moore's Digest of International Law, vol. 3, p. 815.)

This practice by our consuls in China was carried out for many years without an exception up to the year 1898, as will be seen by the "Record of estates of citizens dying in China," kept by the Auditor for the State and Other Departments.

A very competent and trustworthy clerk in that office, Mr. Latham, has had charge of this record for about the last 40 years, and is therefore intimately acquainted with the practice of our consuls in dealing with the estates of our citizens dying in China. He will verify the above statement—the said record will confirm it beyond a question of doubt.

In the year 1898 is found the first tangible evidence of corrupt dealings with the estates of citizens dying intestate in China. It was in Shanghai. The estate was that of one Pearl Cleveland, who died leaving a large quantity of household furniture and much jewelry, including many diamonds and other precious stones.

A so-called incomplete inventory was sent by the then consul general at Shanghai, Mr. John Goodnow. This official, from events which were later brought to light in relation to his career before being sent abroad, comes well within a story related of Secretary Seward, who, when being remonstrated with for retaining a certain minister, a discredit to the country, in the Diplomatic Service, said:

Sir, some persons are sent abroad because they are needed abroad, and some are sent because they are *not* wanted at home.

A strong fight was made against said Goodnow's confirmation by the Senate. Ex-Senator Washburne, of Minnesota, strongly opposed the confirmation. At the time there was some talk of a misappropriation by Goodnow of a Republican campaign contribution in the form of a \$500 check contributed by a certain brewers' association, and prosecution was threatened, but it was deemed best to send him abroad as consul general to the most distant post in the service, and Shanghai was the post selected.

Mr. Goodnow, finding that the Department of State had no one keeping tab on the returns of estates under settlement, not only failed to send the complete inventory of the said Pearl Cleveland estate but simply appropriated it to his own use. He did this with impunity because the woman was a keeper of a house of ill fame; others of her class dared not complain, and if she had any heirs or next of kin, they were not notified.

Emboldened by his success in the Pearl Cleveland estate, Mr. Goodnow started a probate jurisdiction peculiar to himself in that, where possible, much of the assets of intestates went into his own pockets instead of the pockets of the heirs, next of kin, or creditors.

The said record of estates kept by the Auditor for the State and Other Departments shows that said Goodnow sent no inventories of estates or accounts, or assets of any nature whatever, to the said auditor after the second year of his arrival in Shanghai. Why? The laws had not been repealed.

The beginning of Goodnow's downfall was his endeavor to get control of a large estate left by an American, who died within the Chefoo consular district.

The consul of this district, Mr. John Fowler, opposed Mr. Goodnow's attempts to take charge of said estate, Mr. Fowler giving as his reason for not turning over the estate to Goodnow that sections 1709-1710, Revised Statutes, imposed upon the said Fowler the duty of conserving said estate, and that as he was under bond for the faithful performance of the duties prescribed by said law, he declined to let Mr. Goodnow take charge of said estate.

This resulted in Mr. Goodnow making charges against Consul Fowler, and set Fowler to looking up Goodnow's record in Shanghai.

It did not require much detective work to reveal the many criminal acts of the said Goodnow in China, especially in relation to looting of estates of citizens dying intestate and friendless in that far-off country.

Mr. Fowler, after seeking the advice and assistance of an American attorney in Shanghai, left that port with a mass of documentary evidence to present to the Secretary of State.

In due time this evidence was presented, together with other evidence sent by the said attorney, resulting in the Secretary of State sending H. H. D. Pierce, Third Assistant Secretary of State, to Shanghai to investigate and report.

Mr. Pierce went to Shanghai, made his investigation, and returned to Washington.

The result of this investigation was called for by a resolution adopted by the House of Representatives on the 8th of March, 1906, introduced by Hon. John Sharp Williams, of Mississippi, now United States Senator.

The report made by said Mr. Pierce is embodied in House Document No. 665, Fifty-ninth Congress, first session. This report reveals the character of the man who attempted to set aside the law enacted by Congress in 1792, which was followed by all our consuls up to Goodnow's time.

The scandal revealed by said report was followed by a reorganization of the Consular Service and the creation of a United States court for China.

Mr. Goodnow was openly charged with many criminal acts, including blackmail, embezzlement, and looting of estates. The American Security Co., of New York, which was on his official bond for \$6,000, was sued thereon, and after investigation at Washington made no contest, but suffered judgment to go by default.

Mr. Goodnow was asked to resign and his successor as consul general at Shanghai was James L. Rodgers, of Columbus, Ohio.

A few days after Mr. Rodgers's arrival in Shanghai Mr. Henry H. Cunningham, of Belfast, Me., died intestate in Shanghai, leaving a large amount of personal property and real estate.

Mr. Rodgers, who was not a lawyer, having just been appointed to the Consular Service, was not familiar with the duties of his office, and especially was he incompetent to act as a judge of the consular court. A litigant before his court was just as about as apt to protect his legal rights as a patient would be apt to save his life who was about to undergo a surgical operation for appendicitis at Rodgers's hands had the Government appointed him a surgeon in the Army or Navy, instead of a judge in the Consular Service. He was about as ignorant of the science of law as he was of that of surgery.

Notwithstanding his incompetency to act as judge, he followed in the said Goodnow's footsteps, in that he usurped a probate jurisdiction of the said Henry H. Cunningham's estate.

Knowing that the said Cunningham's next of kin were in the State of Maine, over 10,000 miles away, he unhesitatingly gave 10 days' notice by publication in Shanghai that he intended to probate an *alleged* will, and did so without any notice having been received by the next of kin.

Many thousands of dollars were diverted from the brothers of said Henry C. Cunningham. Letters of administration were issued in Maine to a brother of said decedent, and a suit was instituted in the United States Court for China against the said Rodgers on his official bond for neglect of duty in not complying with sections 1709 and 1710, Revised Statutes.

The marshal of said court refused to serve said complaint and summons on said Rodgers, who later left for Habana, Cuba. These facts were reported to the Secretary of State, after which Rodgers waived service, and the case came on for hearing.

Mr. Rodgers's attorney in Shanghai interposed a plea in abatement denying the said administrator, Cunningham, was then or ever had been administrator of the effects in China of the said Henry H. Cunningham, and prayed that the said complaint be dismissed. To the plea in abatement the said administrator demurred, and upon the issue thus joined the court rendered an opinion, entitled in the record a "judgment," sustaining the plea in abatement, but making no further order or judgment in the case.

The case was then taken on appeal to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco (see 171 Fed. Rep., 835), and there dismissed on the ground that the judgment of the United States Court for China was not a final judgment, without going at all into the merits of the case.

Had the administrator filed a replication to said plea in bar instead of a demurrer, and had the court rendered a final judgment thereon adverse to him, and the case then taken to said circuit court of appeals on writ of error instead of writ of appeal, the merits of the case would have been considered by said court.

The said administrator and his brother, the next of kin of said decedent Cunningham, took no further steps in China against said Rodgers, who is still enjoying a salary of \$8,000 a year in the Consular Service at Habana, Cuba, after playing havoc with the said estate in China.

Notwithstanding that the said Thayer's attention was called to the decision of the United States Supreme Court in the case of *United States v. Eaton* (169 U. S., 351), which related to consular fees and to conserving estates of Americans in Siam, a country named with China in section 4083, Revised Statutes, in which case the Supreme Court rendered the following opinion, namely:

Section 1709 of the Revised Statutes makes it the "duty" of consuls and vice consuls to administer upon the personal estate left by any citizen of the United States who shall die within their consulate.

And notwithstanding the fact that the said Thayer's attention was called to sections 1709 and 1710, Revised Statutes, prescribing consuls' duties in relation to citizens dying intestate in China, which sections 1709 and 1710 have not been repealed; and further that his attention was called to the following decisions of the United States Supreme Court, namely, *Farrell v. O'Brien* (199 U. S., 89, 110), *Ellis v. Davis* (109 U. S., 485), *Byers v. McAuley* (149 U. S., 608), *Broderick's Will* (21 Wall., 503), stating the doctrine to be that:

As the authority to make wills is derived from the State and the requirement of probate is but a regulation to make a will effective, matters of pure probate, in the strict sense of the words, are not within the jurisdiction of courts of the United States.

Further, notwithstanding the said Thayer's attention was called to the following additional authorities, namely:

It is a rule of private international law that the personal estate, personal property, has to be distributed according to the testate's or intestate's domicile. (*Story's Conflict of Laws*, Ch. IX, p. 633; *Phillimore on Domicile*, Ch. I.)

A citizen of the United States can not become domiciled in law in countries where they enjoy extraterritoriality. (*Moore's Digest of International Law*, vol. 3, sec. 487, p. 815.)

[This Mr. Moore who rendered the above opinion is now the counsellor of the Department of State, and during the absence of Secretary Bryan on the Pacific coast was Acting Secretary of State.]

The rule for the distribution of the personal effects of any deceased citizen of the United States, either at home or abroad, is the law of the particular State of his domicile and can not be changed by act of Congress. (7 Op. Atty. Gen., 243.)

Section 2 of the act creating the said United States Court for China provides that:

The said United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. (34 Stat. L., 815.)

Notwithstanding, as above stated, that the said Thayer's attention was specifically called to the foregoing authorities, and notwithstanding that the very act of Congress creating said court imposed upon said court a "*supervisory* control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China," the said Thayer has usurped a probate jurisdiction in direct violation of law (namely, in violation of said Sections 1709 and 1710, Revised Statutes) whereby the next of kin and creditors of intestates and testates in their domicile in the United States receiving no notice of application for alleged probate proceedings in far-off China can not contest same, whereby many thousands of dollars are diverted from the legal devisees, legatees, and next of kin.

The said Thayer seeks to justify his said usurped probate jurisdiction by a long-winded, rambling decision, entitled, "Re probate of the will of John Pratt Roberts," rendered by the said United States court for China in an uncontested, ex parte hearing of a petition for probate, presented to the said court at the suggestion of said court at said Shanghai, China.

The said decision or opinion in said case is annexed hereto and made part hereof, as Exhibit No. 3.

It will be seen by an examination of said decision that it comprises 14 legal-cap pages, typewritten, including the syllabus. The following facts also appear, namely:

(a) It nowhere appears in said opinion that the said testate was domiciled in any State or Territory of the United States, or elsewhere. It simply alleges that the said testate was an American citizen who resided in Shanghai at the date of his death. (See Exhibit 3, p. 2 thereof.)

(b) It is also evident that said court "hedges" or appears to be in doubt as to the correctness of its said decision, when it uses the following language:

On account of the meagerness of the library available to the court at the present time, our investigation will be mainly confined to accounts contained in the commentaries of Blackstone and Kent, and Judge Woerner's work on the American Law of Administration. (See Exhibit No. 3, p. 5 thereof.)

This doubt is further shown by the following words in said decision:

It is not, however, specifically provided that the courts of the United States in China shall exercise probate jurisdiction. *If such jurisdiction exist*, it must be by virtue of general power under the treaties and of definite power under the common law, extended by act of Congress to citizens of the United States and their property in China. (See Exhibit No. 3, p. 1 thereof.)

(c) The following allegation is also made in said decision:

The common law courts of England exercised a definite probate jurisdiction previous to and concurrently with the ecclesiastical courts. (See Exhibit No. 3, p. 1, thereof.)

The remaining portion of said decision is a long argument attempting to establish as a fact that the common law courts of England, at the time of the adoption of the Constitution of the United States, exercised a probate jurisdiction and not the ecclesiastical courts. Before showing the failure to establish this as a fact, attention will be called briefly to the following facts, which have already been dealt with at length and supported by the highest authorities, namely:

(a) The power to make laws governing the execution of a will, or the descent of property has not been delegated by the States to the Federal Government

(b) A citizen of the United States can not acquire a domicile in law in a pagan country, where the right of extraterritorial jurisdiction has been granted to the United States by treaty

(c) A pagan country can not confer the right or power to probate on a United States consul or the Court of the United States for China. The only jurisdiction possessed by a court is derived by and from the power that creates it. Though a court of one nation may exist in another nation, under a treaty this is what is termed extraterritorial jurisdiction, but this does not deprive a State of the United States of the right to probate the personal property of its citizens who die in a pagan country.

(d) Personal property is distributed according to the law of the decedent's domicile, and as this domicile can not be acquired in China, where the United States has an extraterritorial jurisdiction, it follows that the laws of descent of the decedent's domicile govern; and as the United States as a nation has no probate laws, and therefore its courts have no probate jurisdiction, it follows that the only court that has jurisdiction of the personal property of a citizen who dies in China is the probate court of the State or Territory in which the decedent had his domicile.

(e) A citizen of the United States can not lose his domicile until he acquires another; as he can not acquire a domicile in law in China, he retains his domicile in some one State or Territory of the United States when he goes to China and can not there expatriate himself.

The said United States Court for China in said decision seeks to give reasons for assuming a probate jurisdiction and for not obeying the mandatory law creating the said court, which law specifically imposes upon it the duty of "a supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China" by endeavoring at great length to establish as a fact that at the time of the adoption of the Constitution of the United States the common law courts of England had jurisdiction of probate, and therefore under section 4086 of the United States Revised Statutes the consular court had probate jurisdiction.

The said section 4086, Revised Statutes, provided, *inter alia*, that jurisdiction of said consular officers—

shall in all cases be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, *the common law* and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law nor the law of equity or admiralty nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

The said United States Court for China, in rendering the said decision, "Re probate of the will of John Pratt Roberts," overlooked one important fact and two important rules or maxims of law in reaching said decision, any one of which established would defeat and render fatally erroneous said decision, namely:

First fact: Had the United States Court for China consulted volume 13, page 193, et seq., of the English Statutes Revised, published by authority, and containing an act entitled "An act to amend the law relating to probates and letters of administration in England" (20 and 21 Vict., ch. 77, sec. 3), enacted August 25, 1857, the said court would have seen it was a fact that probate before said date and from time immemorial, at said date, and up to the time of said act taking effect, on the 1st day of January, 1858, was vested in ecclesiastical courts and not common-law courts. That said act abolished testamentary jurisdiction of ecclesiastical courts and created one probate court, called the court of probate, having its principal registry in London, and district registries under the control

of the court of probate at various places in England, respectively mentioned in Schedule A, attached to said act.

From the time of the sealing and delivery of the Magna Charta, June 19, A. D. 1215, by King John at Runnymede, granting the great safeguards of life, liberty, and property demanded by the barons of England, down to January 1, 1858, probate was vested in ecclesiastical courts.

These courts followed the civil law adopted by the ecclesiastics from the Pandects of Justinian, and the proceedings in the ecclesiastical courts were regulated according to the practice of the civil and canon law, or rather by a mixture of both corrected and new, modeled by their own particular usages. (Blackstone's Commentaries, Book 3, star p. 100.)

It would follow, therefore, that an act of Parliament of Great Britain is a fact; that its recital of the fact that probate up to the 1st day of January, 1858, was in the ecclesiastical courts, was and is an undisputed, an incontestible, and conclusive fact, binding upon any court of the United States upon the production of an authenticated copy of said act of Parliament, if not under the general rules of evidence of judicial notice, as a public, historical fact.

Second. Rule or maxim of law—"Expressio unius est exclusio alterius." This maxim, like all rules of construction, is applicable under certain conditions to determine the intention of the lawmaker when it is not otherwise manifest. What is expressed is exclusive only when it is creative, or in derogation of some existing law, or of some provisions in the particular act. The maxim is applicable to a statutory provision which grants originally a power or right. In such cases the power or right originates with the statute and exists only to the extent plainly granted, and if the statute provides the mode in which they shall be exercised, that mode must be pursued, and no other. This conclusion is almost self-evident, for since the statute creates and regulates there is no ground for claiming or proceeding except according to it. (Sutherland on Statutory Construction, sec. 325, p. 410, and cases therein cited.)

The said section 4086, Revised Statutes, specifically enumerates the sources of jurisdiction of the said consular officers as follows, to wit:

(a) The laws of the United States, where suitable to carry out or to execute the terms of our treaty with China, are extended over all citizens of the United States in China;

(b) Where the laws of the United States are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies the *common law*;

(c) The law of equity; and

(d) The law of admiralty; and if neither the common law, nor the law of equity, or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies,

(e) The minister in China shall by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

Here we have five distinct enumerations of sources of jurisdiction. The laws of the United States do not and can not provide for probate of estates of citizens of the several States—this power or right being reserved to the several States; the common law does not embrace or provide for probate courts as we have seen above; the law of

equity does not, nor does the law of admiralty; nor has the minister accredited to China ever attempted to decree what shall constitute the due execution of a will or to decree or enact probate laws, nor could he lawfully do so.

So much of said section 4086, Revised Statutes, which empowers the minister to China to make decrees and regulations which shall have the force of law is void, for the reason that, as Judge Cooley said in his treatise on Constitutional Limitations:

One of the settled maxims of constitutional law, is that the power conferred upon the legislature to make laws can not be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted can not relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

Judge Cooley supports the above maxim by copious excerpts from Locke on Civil Government. (See Cooley's Constitutional Limitations, 3d ed., pp. 127-128, star, p. 117.)

There was a special reason for Congress in not mentioning probate or divorce in the sources of jurisdiction conferred upon consuls in China and other countries in which we have extraterritorial jurisdiction granted by treaty.

The reason for not mentioning probate and divorce is obvious. Neither one of these powers is granted to the Federal Government by the Constitution, directly or by implication, to carry out any delegated power, but these powers are reserved to the respective States. Hence the maxim *Expressio unius est exclusio alterius* is applicable to said section 4086, Revised Statutes, and excludes divorce as well as probate jurisdiction from the list of enumerated powers conferred upon consuls in China, and therefore from the jurisdiction of the United States Court for China, which took over the jurisdiction of the consular courts in cases involving more than \$500.

By Article VI of the Constitution it is provided that:

This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

No question can arise as to the fact that acts of Congress stand under the Constitution on an equal footing, and that the last expression of the Federal will must prevail—that is, if there are two acts of Congress on the same subject and they conflict the last one enacted prevails.

There is no conflict between said section 4086, Revised Statutes, sections 1709 and 1710, Revised Statutes, and the act of June 30, 1906 (34 Stat. L., 814), creating the said United States Court for China. But assuming *arguendo* that there is a conflict between said section 4086 (enacted June 22, 1860, 12 Stat. L., 72) and said act of June 30, 1906, and that under the common law probate courts derived their jurisdiction and were in fact common-law courts instead of ecclesiastical courts, yet by section 2 of the act of June 30, 1906 (34 Stat. L., 814), creating said United States Court for China the following duty is imposed on said court, namely, to wit:

The said United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China.

What laws of the United States? Why, sections 1709, 1710, and 1711 of the Revised Statutes. If not these sections, what other sections of the Revised Statutes? The answer is clear and simple: There are no other sections of the Statutes on the subject referred to in said section 2 of the said act of June 30, 1906 (34 Stat. L., 814), and the conclusion is equally clear and simple, namely: It is the duty of the said Rufus H. Thayer, as judge of said court, to obey, execute, and carry out the mandatory law laid down in said section 2 of said act creating said court and exercise the supervisory control over consuls and vice consuls therein referred to, instead of taking away from them the estates or preventing them from obeying said sections 1709, 1710 and 1711 and taking unto himself and usurping a probate jurisdiction, under a pretended claim of jurisdiction derived from and under color of the common law, thus violating Article VI of the Constitution of the United States, which makes the laws made in pursuance thereof the supreme law of the land which judges shall be bound thereby; in violation also of said sections 1709, 1710, and 1711, Revised Statutes, and of his oath of office.

The said United States Court for China, in seeking to bolster up its alleged reasons why the probate courts of England were common-law courts instead of ecclesiastical courts, deliberately and premeditatedly goes out of its way to attack the Roman Catholic Church and its clergy, and therefore to offer insult to its some fifteen millions of members—citizens, taxpayers, and voters of the United States—a church as old as Christianity itself, which teaches the same truths and principles all over the world and on which the sun never sets.

It is difficult to see how any administration in power can keep such a man as a judge of the United States Court for China after these facts have been brought to its attention, which it is the object of these charges so to do.

In rendering said decision, the court said:

The Popish clergy took to themselves, under the name of the church and poor, the whole residue of the estate of the deceased, after the two-thirds of the wife and children were divided, without paying even his debts or other charges thereon. This led to the enactment of the Statute of Westminster II, directing the ordinary to pay the intestate's debts so far as the goods would extend. But even after this check to the exorbitant power of the clergy * * * the residuum after payment of debts still remained in their hands. * * * It was the flagrant abuse of this power that again called for legislative interposition, etc.

It is impossible to see the materiality of this attack upon the Catholic clergy, in an alleged interpretation of an act of Congress, in the United States, where there is not an established church and where under the law a citizen is free to worship God as he sees fit or to hold any religious belief he sees fit.

A copy of said decision is filed in the Department of State and is known as "Re Probate of the Will of John Pratt Roberts." The said decision, usurping probate jurisdiction as aforesaid, was rendered for the purposes of graft.

The United States Court for China, in the said case Re Probate of the Will of John Pratt Roberts, decides that Congress has created two probate courts, one for all estates valued under \$500—that is,

the consular court—and one for all estates valued over that amount—that is, the United States Court for China.

In other words, the said Thayer holds that if a citizen dies in Shanghai, leaving an estate less than \$500, the consular court takes probate jurisdiction, and if said citizen had a brother or sister and he or she should die leaving an estate valued over \$500 the United States Court for China takes jurisdiction. Two United States probate courts, and these two in the same city, both of which propositions in the face of the Constitution, laws of Congress, and decisions of the Supreme Court are absurd.

The result of said decision is to open up an enormous field for graft for the officers of that court, who send no inventories of estates to the Department of State, and whose clerk has been under the insignificant bond of \$1,000 while he has had in his custody many thousands of dollars in cash realized from the estates of decedents at a time.

Another result of said decision and the rules of that court is that, 20 days' notice of application for probate published in one of the Shanghai papers is sufficient notice to the heirs, next of kin, and creditors in the United States, who can not even be reached by special-delivery letter under 25 days—for instance, Shanghai to Rockland, Me.—and if answered immediately, would take another 25 days for the answer to reach Shanghai.

The absurdity and injustice of such a ruling is shown in the case of the probate of the alleged will of Henry H. Cunningham, of Belfast, Me. This was a forged will.

Henry H. Cunningham died leaving two brothers and two sisters in Maine, yet the said will was probated in Shanghai after a 10 days' notice was published in a Shanghai newspaper, and over \$44,000 gold was diverted from the said next of kin, while there was in the United States consulate documentary evidence of the transfer of real estate, owned by said decedent and held by him under the usual lease in perpetuity, to certain parties for which there was no accounting in said alleged probate—while there was strong evidence to support the claim that said Cunningham died leaving between 200,000 and 300,000 taels, equivalent at exchange \$0.60 to \$120,000 to \$180,000, lawful money of the United States.

A brother of the said decedent, one Edward Cunningham, has for several years been trying in vain to get some relief from the Department of State. He had no notice that his brother was dead, much less notice that application had been made for probate of his alleged last will and testament until the alleged probate had been granted and over \$44,000 gold unlawfully diverted.

In probating estates without giving notice, assuming he has a right to a probate jurisdiction, violates one of the most fundamental and well-recognized principles of natural law, justice, and universal jurisprudence—the right of every person to a hearing.

It is enough to recall, on this point, that the Supreme Court, in the case of *Sabariego v. Maverick* (124 U. S., 292), quoted from the case of *Windsor v. McVeigh* (93 U. S., 274, 277) the following passage:

Wherever one is assailed in his person or his property there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him or giving him

an opportunity to be heard is not a judicial determination of his rights and is not entitled to respect in any other tribunal.

Mr. Justice Story on the same point says, in *Bradstreet v. Neptune Ins. Co.* (3 Sumn., 600):

It amounts to little more in common sense and common honesty than the sentence of the tribunal which first punishes and then hears the party.

This also quoted by the Supreme Court in the said case of *Sabariago v. Maverick* (124 U. S., 293).

It goes without saying that there was raw graft on the proceeds of this estate. The Cunningham case is cited to show the crude way our Consular Service is managed in the Far East, the absolute neglect by consuls to perform the most sacred duty imposed upon them by sections 1709 and 1710, Revised Statutes, that of conserving estates of those who die in China, leaving there no relatives.

One result of said Thayer's usurpation of a probate jurisdiction in China is that it swells the number of cases that come before his court and thus gives a color of a reason for continuing the existence of said court, thus making it appear that the court has much litigation of importance and that it is kept very busy indeed, as claimed by said Thayer in a letter dated Shanghai, April 10, 1912, addressed to the Secretary of State. (See Exhibit No. 2, pp. 4 and 5 thereof.)

As a matter of fact, from the time of Thayer's appointment as judge in March, 1909, to April 1, 1913, he has not averaged 12 trials a year, and many of these were vagrancy cases, against prostitutes and gamblers, and not one a jury trial.

That this extraordinary state of affairs actually exists 10,000 miles from the seat of the Federal Government, and has existed since the alleged reorganization of the Consular Service in 1906, may be seen from certified documents under seal of the Departments of State and Treasury, hereto annexed. The North China Herald, published weekly in Shanghai, China, on file in the Library of Congress, shows the number and nature of the cases before the said United States Court for China and the testimony taken therein, if any.

The said certified documents under seal of the Treasury Department show that it costs the Government the sum of \$30,200 a year to run said court, that the Government has expended the sum of \$200,000 in seven years in salaries and so-called court expenses, while the litigation lawfully before that court, not alleged probate cases or damage cases against consuls growing out of probate cases, could have been settled for less than half of the salary of the said Thayer as judge of the said court.

The Government pays said Thayer \$8,000 gold a year, the actual purchasing value of which in China is three times as great as it is in the United States, and yet the said Thayer does not do one-twentieth the amount of work that is done by a circuit judge in the Territory of Hawaii at Honolulu, who only receives \$4,000 a year, and whose living expenses are three times higher than they would be in China.

It would be interesting to know the reason why there is this remarkable difference between the salaries of the two judges, especially when the judge in Honolulu has so much more work and has to remain at his post of duty the year round at \$4,000 a year, and the judge in Shanghai is enabled to leave his post of duty for six months yearly and spend that time in Japan and Europe, and receive \$8,000 a year.

It would be still more interesting to know the reason for continuing the existence of said United States Court for China, if the consuls, upon whom are imposed judicial duties by section 4083, Revised Statutes, should be required by law, readily enacted, to be lawyers of experience and good standing, which would thus save the Government \$30,200 a year.

If it were necessary to cite other instances of raw grafting on estates by officials of the United States Court for China, and gross neglect of duty in respect to estates by consular officials in China, the case of the estate of Allie Duncan might be cited.

She had been notorious on the China coast for years as a keeper of a house of ill fame. It was luxuriously furnished, the furniture and household goods being owned by her. She was known to possess valuable jewelry, diamonds, pearls, and other precious stones.

It was known to Frank E. Hinckley, district attorney, that this woman possessed these goods, and that she was slowly dying from cancer. Hinckley was not a lawyer, had never been admitted to practice in any Federal or State court, although the act creating said court provided that the district attorney should be an experienced lawyer of good standing.

Hinckley held a threat of prosecution over the said Allie Duncan for months. During all the time she was slowly dying he was constantly threatening her with imprisonment on a charge of vagrancy as a keeper of a house of ill fame. Why he did not carry out his said threats, and perform the duties of his office as he represented them to her, may best be explained by him. It is well known that such women in Shanghai have paid large sums to our judicial officers for protection.

When the said Allie Duncan at last died, the so-called probate officers of the United States Court for China, who had been expecting and awaiting her death, came down on her house of ill fame, like the ravenous vultures hovering and roosting around the Silent Tower of Calcutta awaiting for the body of the next Parsee to be deposited there by the last funeral ceremonies, and about the time the so-called probate officers of said court finished with said estate it was picked as dry as the bones of the Parsee dead when the vultures have finished with it.

The said Judge Thayer was in London; the said Consul General Wilder was in the United States.

In the Shanghai daily newspapers appeared the announcement of the auction sale of the said Duncan estate, which announcement was signed "E. H. Murray, administrator." The said E. H. Murray was stenographer and acting marshal of the United States Court for China.

Upon a creditor of said estate seeking through his attorney by what authority the said Murray was proceeding as administrator, the said Murray stated that he had been appointed administrator by cable from London by Judge Thayer.

The estate was later advertised for sale by a Chinese, the said Murray having withdrawn his name as administrator, but not his management of said estate. It was finally sold at auction, with the exception of certain jewels and precious stones.

Friends of said decedent in San Francisco were informed by the said alleged probate officers of said court that she had died in abject poverty.

No inventory of the estate which had been so advertised for sale was sent to the Department of State as required by law.

To show the incompetency of said Thayer to act as judge of said court, aside from his usurpation of probate jurisdiction, is the case of the alleged probate of the estate of one William Blanchard.

In a communication under date of Shanghai, China, September 19, 1910, addressed to the Treasurer of the United States, the said F. E. Hinckley makes the following remarkable statements (see Exhibit No. 1, pp. 101-102 thereof): That the said Blanchard was an American citizen, but is unable to give or fails to give the name of the State or Territory of which he is a citizen; that said Blanchard died the 20th of February, 1908, in *London, England*; that the said Blanchard left an estate in China; that the said Thayer as judge of said court had appointed one John M. Dickinson, whom said court understood to be a Danish subject, as administrator of said estate; that said administrator had paid into court the sum of Tientsin taels 45,000, equivalent to \$29,250 gold at exchange .65, part of the said estate; that no will was found, and no heir was found; that an order for distribution would be made later.

A curious incident in this case is that the said alleged administrator is understood by the said Thayer to be Danish. Aside from this, he bears precisely the same name as the consul general who so irregularly handled the large estate of Joseph Azarian, amounting to over \$1,500,000.

It is remarkable that the said Thayer was ignorant of the fact that Great Britain had not surrendered her probate jurisdiction of the estate of any person dying intestate in London; it is equally remarkable that the said alleged Danish administrator did not at once go to the United States consul general in London in February, 1908, upon the death of the said Blanchard and report said Blanchard's death to him, so that he might communicate with the English probate court, as is usual in such cases, instead of waiting until September, 1910—over two and a half years after the death of said Blanchard—to seek alleged probate from the United States Court for China. It is equally remarkable that the said Thayer was ignorant of the fact that even if he had a probate jurisdiction he had no authority or power invested in him to appoint a subject of a foreign country an administrator of the estate of an American citizen for one simple reason—the said American court had no jurisdiction of a subject of Denmark or other foreign country. No legal reason was given by the said Thayer why the said Danish subject was so appointed administrator. It is equally remarkable that the said Hinckley should have used in said communication the words “John M. Dickinson, a friend and associate of the deceased, whose nationality is understood to be Danish.” The natural construction and meaning of this sentence is that the deceased was Danish. But the said Hinckley does not mean this, though his loosely constructed sentence so indicates. Why did not the said Hinckley cause inquiries to be made at the Danish consulate at Shanghai if he had any doubts as to the nationality of the said John M. Dickinson, and why did Thayer appoint a man administrator of whose nationality he had doubts. If the said

Thayer had no doubts of the said John M. Dickinson's nationality, why was it not alleged specifically? (See Exhibit No. 1, pp. 101-102 thereof.)

Numerous other cases might be cited in relation to unlawful acts of our Government officials at Shanghai in dealing with estates of citizens dying there. This subject may be closed here with citing one more case. A young woman, an inmate of a house of ill-fame, realizing the errors of her life and wishing to end it all, made a will leaving about \$10,000 to the daughter born out of wedlock of another inmate of the same house.

Shortly after making the said will she committed suicide by taking carbolic acid. Her money and effects came under the control of the said E. H. Murray, who was the so-called cabled-appointed administrator of the Duncan estate. The mother of the said legatee then married Mr. E. T. Loureiro, a bookkeeper in the Russo-Asiatic Bank at Shanghai, a brother-in-law of John Fowler, many years United States consul at Chefoo, China, and now our consul at Foochow, China.

The legatee's stepfather, the said E. T. Loureiro, a subject of Portugal, then sought to secure the money thus left to his wife's young daughter, in order to invest it in aid of her education and support, and being unable to get any satisfaction from said Murray, sought legal advice. The circumstances under which he married, the source of the legacy, and the notoriety which would follow in forcing said Murray to a prompt settlement led the said Loureiro to submit to the said Murray and to his exorbitant so-called fees, although the said Loureiro bitterly complained of the action of the United States court in this case. Probably the said Murray, the said Wilder, the said Hinckley, and the said Thayer may throw some light on this case, as well as the aforesaid cases, and incidentally they might explain why the clerk's and marshal's accounts only refer to "estates" or probate cases by docket numbers, instead of giving the names of the citizens who have died in China; why they have recourse to this secrecy, as they have suppressed the inventories of the said estates in violation of law.

This is not the first time I have come from China to present charges of corrupt conduct against judicial and consular officers, as will be seen by the said Peirce report. Of this report the New York Sun of March 30, 1906, says:

A SCANDAL EAST OF SUEZ.

It was optional with Secretary Root to send to the House of Representatives the report of Third Assistant Herbert H. D. Peirce upon the consulates in the Orient which he inspected. As originally drawn the resolution "directed" the Secretary of State to furnish the results of Mr. Peirce's inquiries and observations, which were known to be sensational. It had leaked out. On March 8 the resolution was amended so as to request compliance "if not incompatible with the public service." Evidently Mr. Root did not think the service would be damaged by the seamy revelations, except in one instance, which must have been unprintable, for he suppressed it. Not only does the Secretary approve of publicity, but he intimates that the tale of consular lapses from grace is not half told. He really seems glad to let Congress know the worst, as the only way to bring it to its senses as the accomplice before the fact.

Who are responsible for vagabond and grafting consuls, loose fish, incompetents, and raffish fellows in the service if not Congressmen, whose influence puts them there, and has kept them "east of Suez," where they recognize no commandments

and scorn the business code? So Secretary Root let Congress know the truth, but not all the truth, for, in the words of Artemus Ward, that would be "2 mutch." Says the Secretary, with a cynical relish in the equities of the affair: "All of these cases show the necessity of a regular inspection service to keep the department advised whether the consuls are doing well or ill in their distant stations. An occasional brief visit like that of Mr. Peirce to a few consulates is quite insufficient."

It is no violation of confidence to say that the Hon. Herbert H. D. Peirce is not a Sherlock Holmes nor by temperament a severe critic. Sharper eyes would have seen more than he did, and a shrewder talent for inquisition would have made the indictment darker. But he did not have to spy or ferret; the whole business East rose at him and dinned things into his ears. Some of the black sheep are out now, but the mischief has been done; it will take years of the square deal and the simple life to remove the stain on the national escutcheon. One consul was generally drunk and had no morals or business honesty when he was sober. There are some ugly tales told about him. The habits of another were disgraceful; everywhere Mr. Peirce heard how bad they were; the man made even the East smell worse. Another consul, a robust sinner, had a list of charges against him as long as a trade catalogue; he carried things with a high hand; he was a law unto himself; he bestrode the East like a colossus with a cinch; the fellow must have taken as long as Lucifer to fall. Others, none too good, but having some regard for the Ten Commandments, are underscored by Mr. Peirce as not inspiring confidence, or at the best as not being useful in their "present capacity." It is clear the tolerant Third Assistant Secretary was shocked by the secrets the East gave up as he passed by.

Let us hope that Congress will take the lesson to heart.

Those who seek redress before the present United States court for China, are at a greater disadvantage than those who sought redress before the consular court, the predecessor of this court, as corrupt as that court was. (See said Peirce's Report.)

Under the then consular court, litigants had the benefit of assessors to sit with the consul, and they performed duties similar to petit jurors, while the consul was under a heavy bond when he performed judicial duties, and held liable for all negligences and misconduct while so acting judicially. (See secs. 4110 and 1697, Revised Statutes.) But under the present United States court for China, the said Thayer has unlawfully denied jury trials in all felony cases, and common-law civil cases, has unlawfully usurped the province of a jury, as well as usurped a probate court jurisdiction, and is under no bond whatever to protect litigants against his negligences and misconduct in office.

In order to protect litigants before the consular courts in the future, that is, to give them the benefit of consuls learned in the law, instead of incompetents, as at present, Hon. William Hughes, Senator from the State of New Jersey, introduced in the Senate recently the following bill:

"[S. 2877. Sixty-third Congress, first session.]

A BILL To amend an act entitled "An Act to carry into effect provisions of the treaties between the United States, China, Siam, and other countries, giving certain judicial powers to ministers and consuls or other functionaries of the United States in those countries, and for other purposes," approved June twenty-second, eighteen hundred and sixty.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That ministers, consuls, or other functionaries of the United States invested with judicial authority in countries with which the United States now has or hereafter may have extraterritorial jurisdiction, granted by treaty, shall be lawyers of experience and good standing.

GEORGE F. CURTIS.

WASHINGTON, D. C., September 15, 1913.

EXHIBITS.

EXHIBITS.

[Exhibit No. 1, page 1.]

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
April 10, 1913.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of accounts and documents of various officers relating to the United States Court in China, now on file in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]
JNO. S. WILLIAMS,
Assistant Secretary of the Treasury.
W. W. S.
W.

[Exhibit No. 1, page 2.]

[Certificate No. 4837.]

Aggregate to date for the fiscal year 1909.

Judge (disbg. clerk, \$7,333.23; dft., \$666.66)	\$8, 000. 00
Attorney	4, 000. 00
Clerk	3, 000. 00
Marshal	3, 000. 00
Stenographer	1, 234. 94
Rent	780. 10
Furniture	1, 800. 00
Expenses of judge and attorney on circuit	760. 54
General expenses	7, 000. 00
	<hr/> 29, 575. 58

[Exhibit No. 1, page 3.]

[Certificate No. 7179.]

Aggregate to date, June 30, 1910, for fiscal year 1910—Settled with the officers of the court.

Judge	\$7, 333. 34
Attorney	4, 000. 00
Clerk	2, 750. 00
Marshal	1, 250. 00
Stenographer	925. 00
Rent	981. 32
Court expenses	5, 827. 49
Circuit expenses, judge and attorney	605. 60
Disbursed by Thomas Morrison, court expenses	712. 07
	<hr/> 24, 384. 82

143

[Exhibit No. 1, page 4.]

[Certificate No. 8531.]

Aggregate to date, June 30, 1911, for fiscal year 1911—Settled with officers of court.

Judge.....	\$8, 000. 00
Attorney.....	3, 669. 43
Clerk.....	2, 833. 34
Marshal.....	3, 000. 00
Stenographer.....	1, 715. 00
Rent.....	994. 43
Court expenses.....	4, 505. 20
Circuit expenses.....	445. 16
Disbursed by Thomas Morrison.....	405. 88
	<hr/>
	25, 568. 44

[Exhibit No. 1, page 5.]

[Certificate 11277.]

Aggregate to date, June 30/12, fiscal year 1912, settlement with officers of the court.

Judge.....	\$8, 000. 00
District attorney.....	4, 000. 00
Marshal.....	3, 000. 00
Clerk.....	3, 000. 00
Stenographer.....	1, 800. 00
Rent.....	2, 204. 30
Court expenses additional disbursed by Thos. Morrison, \$104.30.....	7, 603. 44
Circuit expenses.....	311. 82
	<hr/>
	29, 919. 56

[Exhibit No. 1, page 6.]

[Voucher No. 1.]

UNITED STATES COURT FOR CHINA,
SHANGHAI, CHINA.

Received of M. Hubert O'Brien, special disbursing officer of the Department of State for the United States Court for China, the sum of Mexican dollars two thousand four hundred fifty-seven and no/100 (\$2,457.00), being gold one thousand dollars (\$1,000.00), converted at the Government rate of exchange for the quarter ending June 30th, 1909, of .407, in payment on account of my salary as judge of the United States Court for China for said quarter.

Dated, May 25th, 1909.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Check No. 66364.

Dated, Shanghai, China, May 25th, 1909.

Drawn on International Banking Corporation, Shanghai, China.

[Exhibit No. 1, page 7.]

[Voucher No. 2.]

UNITED STATES COURT FOR CHINA,
Shanghai, China.

Received of M. Hubert O'Brien, special disbursing officer of the Department of State for the United States Court for China, the sum of Mexican dollars two thousand four hundred fifty-seven and no/100 (\$2,457.00), being gold one thousand dollars (\$1,000.00), converted at the Government rate of exchange for the quarter ending June 30th, 1909, of .407, in full payment of the balance due me on account of my salary as judge of the United States Court for China for said quarter. Dated: Shanghai, China, June 30, 1909.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Check: Nos. 66397 and 67303.

Dated: Shanghai, China, June 22nd & 30th, 1909.

Drawn on International Banking Corporation, Shanghai, China.

[Exhibit No. 1, page 8.]

[Voucher No. 12, for the quarter ending Sept. 30, '09.]

UNITED STATES COURT FOR CHINA.

Shanghai, China, July 31, 1909.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold six hundred and fifty dollars, in payment on account of my salary as judge of the United States Court for China for the quarter ending September 30th, 1909.

I hereby certify that said amount is due and owing to me at the date hereof, and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

[Exhibit No. 1, page 9.]

[Voucher No. 38, for the quarter ending 30 Sept. '09.]

UNITED STATES COURT FOR CHINA,

Shanghai, China, August 31st, 1909.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold six hundred and fifty dollars, in payment on account of my salary as judge of the United States Court for China for the quarter ending September 30th, 1909.

I hereby certify that said amount is due and owing to me at the date hereof, and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

At 416—Mex. \$1,562.50.

[Exhibit No. 1, page 10.]

[Voucher No. 75 for the quarter ending 30 Sept. '09.]

UNITED STATES COURT FOR CHINA,

Shanghai, China, September 30, 1909.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold seven hundred dollars, in full payment of balance due me on account of my salary as judge of the United States Court for China for the quarter ending September 30th, 1909.

I hereby certify that said amount is due and owing to me at the date hereof, and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Mex. \$1,682.69.

[Exhibit No. 1, page 11.]

[Original. Voucher No. 309A.]

UNITED STATES COURT FOR CHINA,

Shanghai, China, May 31, 1910.

Mexican \$1,622.07.

RECEIPT.

Received of F. E. Hinckley, disbursing officer for the court, by compradore order No. 45, the sum of Mexican one thousand six hundred and twenty-two and 7/100 dollars (\$1,622.07), in full of my account for salary as judge of the United States Court for China from May 1 to 31, 1910.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

[Exhibit No. 1, page 12.]

[Voucher No. 344 for the quarter ending June 30, 1910.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, June 30, 1910.

Received of F. E. Hinckley, special disbursing officer of the United States Court for China, the sum of gold six hundred sixty-six and 67/100 (666.67) dollars, in payment on account of my salary as judge of the United States Court for China for the quarter ending June 30, 1910.

I hereby certify that said amount is due and owing to me at the date hereof and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

@411 Mex. \$1,622.07.

JUNE 30, 1910.

Paid by c/o, 66 and 67.

F. E. HINCKLEY, *Disbursing Officer.*

[Exhibit No. 1, page 13.]

[Original voucher No. 380, for the quarter ending September 30, 1910.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, July 31, 1910.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold six hundred sixty-six and 66/100 (\$666.66) dollars, in payment on account of my salary as judge of the United States Court for China for the quarter ending September 30, 1910.

I hereby certify that said amount is due and owing to me at the date hereof and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Mex. 1,568.61.

[Exhibit No. 1, page 14.]

[Original voucher No. 414 for the quarter ending September 30, 1910.]

UNITED STATES COURT FOR CHINA,
Shanghai, China. August 31, 1910.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold six hundred sixty-six and 67/100 (\$666.67) dollars, in payment on account of my salary, as judge of the United States Court for China for the quarter ending September 30, 1910.

I hereby certify that said amount is due and owing to me at the date hereof, and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Mex. 425 equals 1,568.64.

[Exhibit No. 1, page 15.]

[Original voucher No. 430 for the quarter ending September 30, 1910.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, September 30, 1910.

Received of Wong Soong Dong, compradore of the United States Court for China, the sum of gold six hundred sixty-six and 67/100 (\$666.67) dollars, in payment on account of my salary as judge of the United States Court for China for the quarter ending September 30, 1910.

I hereby certify that said amount is due and owing to me at the date hereof and has not, nor any part thereof, been paid from any other source.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

\$1,568.64 Mex.

[Exhibit No. 1, page 16.]

[Original voucher No. 466.]

RECEIPT FOR SALARY.

UNITED STATES COURT FOR CHINA,
Shanghai, China, October 31, 1910.

Received from D. A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 140 on the compradore of the court, Mexican fifteen hundred seventy-two and 31/100 (\$1,572.31) dollars, equivalent to gold six hundred sixty-six and 66/100 (\$666.66) dollars, at the Treasury rate of .424, for the December quarter, 1910, in full payment of my salary to date as judge of the United States Court for China at the rate of gold \$8,000.00 a year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 17.]

[Original voucher No. 713.]

RECEIPT FOR SALARY.

IN THE UNITED STATES COURT FOR CHINA,
Shanghai, China, October 13, 1911.

Voucher No. —.

Received from Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 233 on the compradore of the court, the sum of Mexican one thousand five hundred seventy-six & 05/100 (\$1,576.05) dollars, equivalent to gold six hundred sixty-six & 67/100 (\$666.67) dollars, at the Treasury rate of .423 for the quarter ending September, 1911, in full payment of my salary as judge of the United States Court for China for the month of September, 1911, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 18.]

[Original voucher No. 723.]

RECEIPT FOR SALARY.

UNITED STATES COURT FOR CHINA,
Shanghai, China, October 31, 1911.

Voucher No. —.

Received from Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 237 on the compradore of the court, Mexican, one thousand six hundred two and 55/100 (\$1,602.55) dollars, equivalent to gold six hundred sixty-six and 66/100 (\$666.66) dollars at the Treasury rate of .416 for the quarter ending December 31, 1911, in full payment of my salary as judge of the United States Court for China, for the month of October 1911, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 19.]

[Original voucher No. 916.]

RECEIPT FOR SALARY.

UNITED STATES COURT FOR CHINA,
Shanghai, China, May 31, 1912.

Voucher No. 916.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 280 on the compradore of the court, Mexican one thousand four hundred fifty-two & 44/100 (\$1,452.44) dollars, equivalent to gold six hundred sixty-six & 67/100 (\$666.67) at the Treasury rate of .459 for the quarter ending June 30, 1912, in payment of my salary as Judge of the United States Court for China for the month of May, 1912, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 20.]

[Original voucher No. 929.]

RECEIPT FOR SALARY.

Voucher No. 929.

UNITED STATES COURT FOR CHINA,
Shanghai, China, June 30, 1912.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 282 on the compradore of the court, Mexican one thousand four hundred fifty-two & 44/100 (1,452.44) dollars, equivalent to gold six hundred sixty-six & 67/100 (\$666.67) at the Treasury rate of .459 for the quarter ending June 30, 1912, in payment of my salary as judge of the United States Court for China for the month of June, 1912, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 21.]

[Voucher No. 947.]

RECEIPT FOR SALARY.

Voucher No. —.

UNITED STATES COURT FOR CHINA,
Shanghai, China, July 31, 1912.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 287 on the compradore of the court, Mexican thirteen hundred eighty-eight & 88/100 (1,388.88) dollars, equivalent to gold six hundred sixty-six & 66/100 (666.66), at the Treasury rate of 48, for the quarter ending September 30, 1912, in payment of my salary as judge of the United States Court for China for the month of July, 1912, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 22.]

[Voucher No. 968.]

RECEIPT FOR SALARY.

Voucher No. —.

UNITED STATES COURT FOR CHINA,
Shanghai, China, August 31, 1912.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 288 on the compradore of the court, Mexican thirteen hundred eighty-eight & 90/100 (\$1388.90) dollars, equivalent to gold six hundred sixty-six & 67/100 (\$666.67) at the Treasury rate of 48, for the quarter ending September 30, 1912, in payment of my salary as judge of the United States Court for China for the month of August, 1912, at the rate of gold \$8000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

Mexican \$1388.90.

[EXHIBIT No. 1, page 23.]

[Voucher No. 987.]

RECEIPT FOR SALARY.

Voucher No. —.

UNITED STATES COURT FOR CHINA,
Shanghai, China, September 30, 1912.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 289 on the compradore of the court, Mexican thirteen hundred eighty-eight & 90/100 (\$1388.90) dollars, equivalent to gold six hundred sixty-six & 67/100 (\$666.67) dollars at the Treasury rate of 48, for the quarter ending September 30, 1912, in payment of my salary as judge of the United States Court for China for the month of September, 1912, at the rate of gold \$8000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court of China.

[Exhibit No. 1, page 24.]

[Original.]

RECEIPT FOR SALARY.

Voucher No. 1035.

UNITED STATES COURT FOR CHINA,
Shanghai, China, October 31, 1912.

Received of Daniel A. Wilson, junior, special disbursing officer of the United States Court for China, by compradore order No. 305 on the compradore of the court, Mexican one thousand three hundred sixty & 53/100 (1,360.53) dollars, equivalent to gold six hundred sixty-six & 66/100 (\$666.66) dollars at the Treasury rate of 49 for the quarter ending December 31, 1912, in payment of my salary as judge of the United States Court for China for the month of October, 1912, at the rate of gold \$8,000.00 per year.

(Signed) RUFUS H. THAYER,
Judge United States Court for China.

[Exhibit No. 1, page 25.]

[Original voucher #426.]

No. —.

VOUCHER FOR RENT.

SHANGHAI, September 30, 1910.

Received of Wong Soong Dong, compradore, United States consul general at Shanghai, the sum of two hundred & fifty United States currency dollars in full for rent (for the quarter ending this day) of rooms in Nos. 35 & 36 Whangpoo Road, which are devoted solely to the business of this consulate general.

Per pro WARD, PROBST & Co.
(Signed) T. RARDE.

Approved Sept. 30, 1910.

D. A. WILSON, Jr.

\$250.00

At 586 taels 426.62.

At 74 Mex. \$576.51; at 425 g. \$245.02.

[Exhibit No. 1, page 26.]

[Voucher No. 514. Original.]

VOUCHER FOR RENT.

Voucher No. 514.

No. —.

SHANGHAI, December 31, 1910.

Received of Wong Song Dong Comp'd, United States consul general court at Shanghai, the sum of two hundred and fifty, United States currency, dollars, in full for rent (for the quarter ending this day) of rooms in No. 35-36 Whangpoo Road, which are devoted solely to the business of this consulate general & court.

Per pro. WARD, PROBST & Co.,
(Signed) P. RARDE.(?)

Approved Dec. 30, 1910.

D. A. WILSON, Jr.

Gold \$250.00.

At 585 taels 427.35.

At 753 Mex. \$567.53, at 424 U. S. \$240.63.

[Exhibit No. 1, page 27.]

VOUCHER FOR RENT.

Voucher No. 572.

No. —.

UNITED STATES COURT FOR CHINA,
Shanghai, March 29th, 1911.

Received of Wong Soong Dong, compradore, United States Court for China at Shanghai, the sum of two hundred fifty & no/100 dollars, in full for rent (for the quarter ending this day) of rooms in No. 36 Whangpoo Road, which are devoted solely to the business of this consulate general.

(Signed) PROBST, HANBURY & Co., Ltd.
H. HANBURY, *Director.*

Approved, March 29, 1911

D. G. WILSON, Jr.

\$250.00.

At 604 = TLS. = 413.91.

For March quarter, 1911.

At 736 Mex., \$562.38; at 438 gold, \$246.32.

[Exhibit No. 1, page 28.]

[Voucher No. 636.]

VOUCHER FOR RENT.

No. —.

SHANGHAI, *June 30, 1911.*

Received of Wong Soong Dong of the United States Court for China, at Shanghai, the sum of two hundred & fifty & no/100 United States currency dollars in full for rent (for the quarter ending this day) of rooms in 36 Whangpoo Road, which are devoted solely to the business of this consulate general.

(Signed) PROBST, HANBURY & Co., Ltd.,
H. HANBURY, *Director.*

Gold.

\$250.00/100.

At 583 equal to taels 428.82.

At 742, \$577.92; at 423 gold, \$244.46.

[Exhibit No. 1, page 29.]

[Original voucher No. 665.]

VOUCHER FOR RENT.

Voucher No. 665.

No. —.

SHANGHAI, *August 9, 1911.*

Received of Wong Soong Dong, compradore, United States consul general at Shanghai, the sum of eighty-three & 33/100 United States dollars in full for rent (for the quarter ending this day) of rooms in No. 35, 36 Whangpoo Road, which are devoted solely to the business of this consulate general.

(Signed) PROBST, HANBURY & Co., LTD.,
H. HANBURY, *Director.*

Approved August 9, 1911. D. A. WILSON, Jr.

\$83.33.

At 583 taels, \$142.93.

At 75, \$190.57; at 423 G, \$80.61.

[Exhibit No. 1, page 30.]

[Original voucher No. 703.]

VOUCHER FOR RENT.

No. —.

SHANGHAI, *September 30, 1911.*

Received of Wong Sung Dong, compradore, United States Court for China, at Shanghai, the sum of four hundred gold dollars, in full for rent (for the quarter ending this day) of rooms No. 12, Whangpoo Road, which are devoted solely to the business of this court.

(Signed) CHINA REALTY COMPANY, LTD.
J. RAVE (?),
Managing Director.

\$400.00/oo gold.
At 583 taels 686.11.
At 752 \$912.38 at 423 G. \$385.94.

[Exhibit No. 1, page 31.]

[Original voucher No. 779.]

VOUCHER FOR RENT.

No. —.

SHANGHAI, *December 31, 1911.*

Received of Wong Soong Dong, Comp'rd, United States consul general at Shanghai, the sum of one thousand forty-five & 30/100 Taels, in full for rent (for the quarter ending this day —).

(Signed) CHINA REALTY COMPANY, LTD.,
F. J. RAVEN (?), *Managing Director.*

\$Tls. 1,045.30/xx.
At 77 Mex. \$1,357.53 at 416 G. \$564.73.

[Exhibit No. 1, page 32.]

[Voucher No. 864.]

VOUCHER FOR RENT.

No. —.

SHANGHAI, *March 30, 1912.*

Received of Wong Soong Dong Comp, United States Court for China, at Shanghai the sum of one thousand and one & 67/100 taels in full for rent (for the quarter ending this day) of rooms in No. 12 Whangpoo Road, which are devoted solely to the business of this court.

(Signed) CHINA REALTY COMPANY, LTD.,
F. J. RAVEN, (?) *Managing Director.*

\$1,001.67.
At 742 Mex. \$1,349.96 at 4.34 G. \$585.88.

[Exhibit No. 1, page 33.]

[Original voucher No. 928. Voucher No. 928.]

VOUCHER FOR RENT.

No. —.

SHANGHAI, *June 29, 1912.*

Received of Wong Soong Dong Compradore, United States consul general at Shanghai, the sum of nine hundred forty-seven & 87/100 taels, in full for rent (for the quarter ending this day) of rooms in No. 36 Whangpoo Road, which are devoted solely to the business of this court.

(Signed) CHINA REALTY COMPANY, LTD.
T. J. RAVEN (?),
Managing Director.

T. \$947.87/100.
At 741 Mex., \$1,279.18.
At 459 G. \$587.14.

[Exhibit No. 1, page 34.]

[Original voucher No. 693.]

SHANGHAI MUNICIPAL COUNCIL.

Received payment of general municipal rate at 12% per annum for $\frac{3}{4}$ quarter year ending September 30, 1911, amounting to tael 48.00 @ 754 \$63.66 @ 423 G. \$26.93 on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China. 25/9/1911.

(S'gd) GEO. E. MARSHALL,
Tax Collector.

GENERAL MUNICIPAL RATE FOR QUARTER YEAR ENDING SEPTEMBER 30, 1911.

[Declared due July 1, 1911.]

I, G. E. Marshall, by authority of the municipal council, do hereby demand payment of general municipal rate at 12% per annum for $\frac{3}{4}$ quarter ending September 30, 1911, amounting to tael 48.00, on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China, assessed at tael 2,400.

Shanghai, 25/9/1911.

This rate to be paid within fourteen days from date of presentation of demand note, agreeably with resolution passed at the meeting of ratepayers held on March 21, 1911.

(Signed) W. E. LEVESON,
Secretary.

Subsidiary coin will be received at the current market rate.

[Exhibit No. 1, page 35.]

[Original voucher No. 772. Voucher No. 772.]

SHANGHAI MUNICIPAL COUNCIL.

Received payment of general municipal rate at 12% per annum for quarter year ending December 31, 1911, amounting to tael 72.00, at 77 Mex. \$93.51 @ 416 G. \$38.90, on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China.

13/12/1911.

(Signed) GEO. E. MARSHALL,
Tax Collector.

GENERAL MUNICIPAL RATE FOR QUARTER YEAR ENDING DECEMBER 31, 1911.

[Declared due October 1, 1911.]

I, G. E. Marshall, by authority of the municipal council, do hereby demand payment of general municipal rate at 12% per annum for quarter ending December 31, 1911, amounting to tael 72.00, on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China, assessed at tael 2,400.

Shanghai, 5/10/1911.

This rate to be paid within fourteen days from date of presentation of demand note, agreeably with resolution passed at the meeting of ratepayers held on March 21, 1911.

(Signed) W. E. LEVESON,
Secretary.

Subsidiary coins will be received at the current market rate.

[Exhibit No. 1, page 36.]

[Original voucher No. 803. Voucher No. 803.]

SHANGHAI MUNICIPAL COUNCIL.

Received payment of general municipal rate at 12% per annum for quarter year ending March 31, 1912, amounting to taels 72.00 at 743 Mex. \$96.91 @ 4.34 G. \$42.06 on house and tenements No. 12 Whangpoo Road, occupied by U. S. Court for China. 31/11, 1912.

(Signed) GEO. E. MARSHALL,
Tax Collector.

GENERAL MUNICIPAL RATE FOR QUARTER YEAR ENDING MARCH 31, 1912.

[Declared due January 1, 1912.]

I, G. E. Marshall, by authority of the municipal council, do hereby demand payment of general municipal rate at 12% per annum for quarter ending March 31, 1912, amounting to taels 72.00, on house and tenement No. 12 Whangpoo Road, occupied by U. S. Court for China, assessed at taels 2,400. \$72.00

O. K., D. A. W., JR.

JANUARY 31, 1912.

Shanghai, 31/1/ 1912.

This rate to be paid within fourteen days from date of presentation of demand note, agreeably with resolution passed at the meeting of ratepayers held on March 21, 1911.

(Signed) W. E. LEVESON,
Secretary.

Subsidiary coins will be received at the current market rate.

[Exhibit No. 1, page 37.]

[Original voucher No. 882. Voucher No. 882.]

SHANGHAI MUNICIPAL COUNCIL.

Received payment of general municipal rate at 12% per annum for quarter year ending June 30, 1912. amounting to taels 72.00 at 744 Mex. \$96.77 @. 459 G. \$44.42, on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China. 15/4/1912.

(Signed) GEO. E. MARSHALL.
Tax Collector.

GENERAL MUNICIPAL RATE FOR QUARTER YEAR ENDING JUNE 30, 1912.

[Declared due April 1, 1912.]

I, G. E. Marshall, by authority of the municipal council, do hereby demand payment of general municipal rate at 12% per annum for quarter ending June 30, 1912, amounting to taels 72.00, on house and tenements No. 12 Whangpoo Road, occupied by U. S. court for China, assessed at taels 2,400./.

Shanghai 15/4/1912.

(Signed) O. K., DAWY

This rate to be paid within fourteen days from date of presentation of demand note, agreeably with resolution passed at the meeting of ratepayers held on March 21, 1912.

(Signed) W. E. LEVESON,
Secretary.

Subsidiary coins will be received at the current market rate.

[Exhibit No. 1, page 38.]

Marshal's fees and costs, criminal docket, July 14, 1909.

Mar-shals' No.	Courts' No.	Defendant.	Fees.			Costs.			Receipts paid.	
			Gold.	Rate.	Mex.	Mex.	Rate.	Gold.	Mex.	
1	1	R. J. McCord.....	16.75	.....	.....	.....	.....	.....	12.02	.....
2	2	William Nelson.....	12.30	.....	.....	11.40	.....	.....	11.40	11.40
3	5	A. Sangeland and A. Martinez.....	8.50	.....	.....	.....	.....	.....	.....	.....
4	3	S. R. Price.....	6.20	.....	.....	.....	.....	.....	.....	.....
5	4	Victorino Torres.....	2.50	.....	.....	.....	.....	.....	.....	.....
6	6	Charles A. Dibble.....	9.80	.....	.....	.....	.....	.....	.....	.....
7	7	Alice Duncan.....	3.80	.554	6.86	1.25	.....	.....	6.86	.....
8	8	Dorothy Grant.....	3.65	.554	6.59	1.00	.....	.....	6.59	.....
9	9	Minnie Kingsley.....	3.65	.554	6.59	.75	.....	.....	6.59	.....
10	10	Emily Moore.....	3.65	.554	6.59	1.00	.....	.....	6.59	.....
11	11	Maxine Livingston.....	4.65	.554	8.39	1.00	.....	.....	9.39	.....
12	12	Mona Monteith.....	3.65	.554	.....	.75	.....	.....	.....	.....
13	13	Zaza Van Buren.....	1.50	.554	2.70	.75	.....	.....	2.70	.....
14	14	Alice Sherwood.....	3.65	.554	6.59	.75	.....	.....	6.59	.....
15	15	Margeret Kendall.....	.65	.....	.....	.....	.....	.....	.....	.....
16	16	Francis S. Mayer.....	.50	.....	.....	.....	.....	.....	.....	.....
17	18	George D. Keney.....	.50	.....	.....	.....	.....	.....	.....	.....
18	17	B. F. Colvin.....	29.65	.....	.....	54.60	.....	.....	54.60	54.60
19	19	.....do.....	4.50	.....	.....	.....	.....	.....	.....	.....
20	20	T. C. Arlington.....	.50	.....	.....	.....	.....	.....	.....	.....
21	21	H. A. C. Emery and G. F. Curtis.....	3.15	.....	.....	.....	.....	.15	.....	.....
22	22	O. Bishop and J. C. Gould.....	2.50	.....	.....	.....	.....	.....	.....	.....
23	23	James L. Moffet.....	9.40	.....	.....	.....	.....	.....	.....	.....
24	24	Carl J. Dressner.....	.....	.....	.....	.....	.....	.....	.....	.....
25	25	H. N. Demenil.....	3.40	.....	.....	835.45	.....	.....	.....	.....
26	26	Casebia Flores.....	4.50	.....	.....	21.08	.427	9.00	.....	.....
27	27	Wm. Childress.....	29.77	.....	.....	471.21	.....	.....	.....	.....
28	28	Marion Greenwald.....	4.50	.....	.....	.....	.....	.....	.....	.....
29	23	S. R. Price.....	2.50	.....	.....	14.05	.427	6.00	.....	.....
30	28	F. W. Carus.....	2.50	.....	.....	.....	.....	.....	.....	.....
31	30	.....do.....	2.50	.....	.....	.....	.....	.....	.....	.....
32	.....	Thomas Jones.....	76.00	.....	.....	778.62	.....	.....	.....	.....
			367.42	.....	44.31	2,193.66	.....	15.15	123.33	66.00

July 14, 1909. Received from clerk of court in payment of above, \$57.33.
(Signed) M. HUBERT O'BRIEN.

[Exhibit No. 1, page 40.]

Mar-shals' No.	Clerks' No.	Plaintiff.	Defendant.	Fees.			Expenses paid by clerk.	
				Gold.	Rate.	Mex.	Mex.	Mex.
		Br't for'd.....		38. 15	.....	69.71	27.36	27.91
28	33	A. W. Cunningham.	J. L. Rodgers.....	.50	543	.92	.....	.....
29	27	Racine Ackerman & Co.	F. Waterhouse & Co..	.50	543	.92	.....	.....
30	34	Chu Kun Kee.....	A. W. George & Co....	1.65	543	3.04	.28	.28
31	36	Woo Ah Sung et al..	C. H. Biddle et al.....	3.30	526	6.27	.....	.....
32	37	Wong Sung Tien....	John Green.....	1.65	526	3.14	.95	.....
33	38	C. L. Zilz.....	P. W. Irvine et al.....	2.65	526	5.04	.28	.....
34	39	F. W. Brooks.....	do.....	2.65	526	5.04	.28	.....
35	41	Lee Zung Dong.....	A. W. Danforth.....	2.15	526	4.09	.28	.....
36	36	Woo Ah Sung et al..	C. A. Biddle et al.....	.25	526	.48	.....	.....
37	42	C. A. Froman et al..	Thos. L. Cobbs.....	1.65	526	3.14	.19	.....
38	18	Chen Wong Tai.....	A. W. George & Co....	.50	554	.90	.....	.....
39	34	Chu Kun Kee.....	do.....	16.07	526	30.55	67.81	98.36
40	43	Shanghai Land In-vestment Co.	H. A. McConnell.....	2.15	526	4.09	.....	.....
41	45	Hongkong Milling Co.	Fraxar & Co.....	2.65	526	5.04	.19	.....
42	46	Chui Cheu Tsuan...	Geo. F. Curtis.....	1.50	542	2.77	.....	.....
43	47	Tsu Yue San.....	George Mooser.....	1.80	542	3.32	.....	.....
44	48	J. Kruse.....	A. Stein, etc.....	1.65	542	3.04	.28	.....
45	49	China Imp. & Ex. Lumber Co.	L. C. Gillispie & Sons.	1.50	542	2.77	.....	2.77
46	50	Lan Ching Tsau.....	Southern Methodist Mission et al.	.50	542	.92	.....	.....
47	51	L. Barbaur & Sons..	B. Roth & Co.....	1.65	542	3.04	.28	.....
48	52	C. A. Englebract....	Harry J. Black.....	1.65	466	3.54	.....	.....
49	53	Carlowitz & Co.....	do.....	1.65	466	3.54	.....	.....
50	54	Brown-Burke.....	James W. Ragsdale...	1.50	443	3.39	120.00	120.00
51	55	Grusburg & Co.....	Zimmerman & Co.....	1.50	443	3.39	.67	.....
52	56	Zue Hoong Sue et al.	Jno. S. Dooly et al....	2.80	443	6.32	.....	.....
53	57	Luckan & Co.....	Pustau & Co.....	.50	443	1.12	.....	.....
54	76	Wong Lu Chong....	C. E. L. Munyon.....	1.50	427	3.51	.35	.....
55	58	J. C. Epperly et al..	J. J. Connell.....	1.65	427	3.86	.....	.....
56	59	Ah Choy.....	J. J. Woodruff.....	1.65	427	3.86	.....	.....
				99.47	.....	190.76	218.92	249.32

[Exhibit No. 1, page 41.]

Marshals' No.	Clerks' No.	Plaintiff.	Defendant.	Fees.			Expenses paid by clerk.	
				Gold.	Rate.	Mex.	Mex.	Mex.
57	61	Br't. For'd..... International Bank- ing Corp'n.	Pustau & Co.....	99. 17 .50	427	190. 76 1. 17	218. 92	249. 32
58	62	M. J. Connell.....	J. C. Epperly et al....	2. 65	427	6. 20		
59	55	Grusburg & Co.....	Zimmerman & Co.....	1. 10	443	2. 48		
60	63	J. C. Epperly.....	J. J. Woodruff.....	1. 50	427	3. 50	11. 95	11. 95
61	65	Chong Lai Kee.....	P. Zimmerman.....	1. 65	415	3. 97		
62	64	Zn Yueng Ching et al	do.....	1. 80	415	4. 34		
63	66	Y. C. Tong.....	F. W. Sutterle.....	1. 65	415	3. 97		
64	67	Cheng Mao.....	Markt & Co.....	1. 65	415	3. 97		
65	68	C. Moller.....	L. L. Hopkins.....	1. 65	396	4. 16		
66	69	A. R. Johnstone....	Geo. B. Rea.....	1. 65	396	4. 16		
67	70	Ling Yue Dong.....	Carl L. Seitz.....	1. 65	396	4. 16		
68	71	Lily Snethlege.....	do.....	1. 65	396	4. 16		
69	72	Edward Edwards....	R. H. Graves et al....	6. 10	396	15. 39	1. 20	
70	70	Ling Yue Dong Est..	Carl L. Seitz.....					
71	58	Estate Margeret Ort- wine est.		2. 65	443	4. 89		
72	59	Estate Hetherington Ortwine.		2. 65	443	4. 89		
				129. 97		262. 17 232. 07	232. 07	261. 27
						494. 24 261. 27		
						232. 97		

July 16, 1909. Received of F. E. Hinckley, clerk of court, Mexican two hundred and thirty-two and 97/100 dollars (\$232.97) in full payment balance due as above.

M. HURBERT O'BRIEN,
Marshal United States Court for China.

SHANGHAI, CHINA, July 17, 1909.

[Exhibit No. 1, page 42.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1909.

[From November 6th to December 27th, 1909.]

CRIMINAL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.

No cases.

(Signed) EDWARD H. MURRAY,
Marshal United States Court for China.

[Exhibit No. 1, page 43.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1909.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
73	Oct. 28, 1909	A. A. Blankstein (Russian).	Samuel Zimmerman.....	Debt.....	3.20	.....	Paid to disbursing officer.	\$2.70 of this amount of fees was earned prior to my appointment as marshal and while acting as deputy marshal for Hubert M. O'Brien.
74	Nov. 12, 1909	Samuel Zimmerman (American).	M. J. Connell & J. J. Connell, doing business as Connell Brothers.	.....do.....	2.10	.....	.....do.....	

(Signed) EDWARD H. MURRAY,
Marshal United States Court for China.

[Exhibit No. 1, page 44.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1909.

[From Dec. 27, 1909, date of appointment.]

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks

No cases.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 45.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended March 31st, 1910.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
75	Feb. 7, 1910	Chinag Zung Match Factory (Chinese Corporation).	Yek Tong Lin Fire & Marine Insurance Co. (Philippine Corporation).	Debt.....	4.50	.....	Paid disbursing officer.	
76	Feb. 14, 1910	Henry P. Fletcher (American).	Ex parte.....	do.....	.....	2.65	Charged to Gov.....	
77	Feb. 25, 1910	Iran N. Skougarevsky (Russian).	Vera Zimmerman.....	do.....	1.80	.....	Paid disbursing officer.	
78	Mar. 3, 1910	Pierre J. Briol (Russian) ...	W. Katz & Company.....	do.....	.....	.....	.....	Not found within jurisdiction.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 46.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended June 30th, 1910.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
79	June 8, 1910	H. Barkeovitch (American).	Maurice Katz and Martin Katz.	Debt.....	5.30	.....	Paid disbursing officer.	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended September 30th, 1910.

CIVIL CASES.

Number of cases.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
80	July 19, 1910	R. M. Noblston (British) ..	Vacuum Oil Company	Debt.....	2.10	.....	Paid disbursing officer.	
81	July 28, 1910	Peter M. Hokhloff (Russian).	Michael V. Concoff.....	.....do.....	2.25	.....	.....do.....	
82	Aug. 15, 1910	Lao Lai Ting and Chung Ting Yer (Chinese).	Charles R. Bennett.....	.....do.....	2.40	.....	.....do.....	
83	Aug. 20, 1910	Charles R. Bennett (American).	F. M. Brooks.....	.....do.....	2.40	.....	.....do.....	
84	Aug. 31, 1910	G. I. Seekury (British) ...	F. M. Brooks.....	.....do.....	2.55	.....	.....do.....	
85	Sept. 12, 1910	Laura Brown (American) ..	Robert W. Sexton.....	.....do.....	7.35	.....	.....do.....	
86	Sept. 23, 1910	Edward Bell (American) ..	William E. Saunar.....	.....do.....	2.70	.....	.....do.....	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 48.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1910.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
87	Oct. 14, 1910	I. R. Michael (British).....	W. D. Carmichael (British).	Debt.....	.....	1.65	Charged to Gov.....	Subpoena served at request of H. B. M. supreme court.
88	Dec. 5, 1910	Cheng Chin Cheg (Chinese).	T. J. F. Moran (British)....	.....do.....	.....	.90	.....do.....	Subpoena served at request of H. B. M. supreme court.
89	Dec. 29, 1910	Foh Chang (Chinese).....	J. H. McMichael.....	.....do.....	1.95	.....	Paid disbursing officer.	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended March 31st, 1911.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
90	Jan. 5, 1911	Beach, Richards, Earl, Young, Gossett & Laurenson.	Seymour, Thatcher & Inch (Seymour & Co.).	Debt.....	6.30	.....	To disbursing officer.	
91	Jan. 28, 1911	B. H. Fuhlers.....	Siak Indrapoers Concession (Ltd.).	.....do.....	.....	2.70	Charged to Gov.....	Subpoena served at request of H. B. M. supreme court.
92	Feb. 24, 1911	J. E. Bingham, liquidator for Siak Indrapoers Con., Ltd (British).	S. A. Ransom.....	.....do.....	1.65	.....	To disbursing officer.	
93	Mar. 13, 1911	W. E. Leveson.....	H. du F. Hutchison.....	.....do.....	.....	1.05	Charged to Gov.....	Subpoena served at request of H. B. M. supreme court.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 50.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended June 30th, 1911.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
94	May 22, 1911	Sze Hai Ching (Chinese). Shan Fong Bank (Chinese)	Charles A. Biddle. Barlow & Company.	Debt.....do.....	1.65.....	.....0.90	Paid disbursing officer. Charged to Gov.....	Subpœna served at request of H. B. M. Supreme court.
95	June 21, 1911							

(Signed) D. A. WILSON,
Marshal United States Court for China.

[Exhibit No. 1, page 51.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended Sept. 30, 1911.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
96	July 17, 1911	M. E. B. Ezra.	E. J. Ezra.	Debt.		\$0.90	Charged to Gov.	Subpoena served at request of H. B. M. supreme court.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 52.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1911.

CIVIL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
97	Oct. 6, 1911	Nee chang Mou (Chinese).	H. W. Andrews and E. W. George.	Debt.....	4.75	.....	Paid disbursing officer.	
98	Nov. 9, 1911	Eric M. Ross, Liquidator Talang Rubber Estate, Ltd (British).	Arthur J. Israel.....	.....do.....	1.65	.....	.....do.....	
99	Nov. 16, 1911	Robert W. Steiner (British).	Frazar & Company.....	.....do.....	1.65	.....	.....do.....	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 53.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1909.

[From December 27th to end of quarter.]

CRIMINAL CASES.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
33	Dec. 31, 1909	United States of America..	Fredrick T. Faulkner.....	Embezzlement.....		2.50	Charged to Gov.....	All expenses connected with arrest and delivery of the defendant to consular court at Tientsin accounted for by the consulate at Tientsin.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 54.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended March 31st, 1910.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
34	Mar. 31,—	United States of America...	C. A. Engelbracht.....	Embezzlement.....	.....	.....	.....	Accounted for in following quarter.

(Signed) D. A. Wilson, Jr.,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended June 30, 1910.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
34	Mar. 31, 1910	United States of America.	C. A. Engelbracht.....	Embezzlement.....	.....	1.55	Charged to Gov.....	
35	June 9, 1910	.....do.....	Robert W. Sexton.....	Gambling.....	.....	4.00	.....do.....	
36	June 9, 1910	.....do.....	James Hadley.....	.....do.....	.....	6.20	.....do.....	
37	June 14, 1910	.....do.....	H. J. Hennage.....	.....do.....	.....	6.55	.....do.....	
38	June 13, 1910	.....do.....	Harry Ross.....	.....do.....	.....	31.45	.....do.....	
39	June 13, 1910	.....do.....	M. Kosaack.....	.....do.....	.....	33.00	.....do.....	
40	June 13, 1910	.....do.....	James Hadley.....	Threatening to kill.....	.....	4.00	.....do.....	
41	June 20, 1910	.....do.....	Dell Clark.....	Gambling.....	.....	62.90	.....do.....	
42	June 23, 1910	.....do.....	Mike Kossack.....	Embezzlement.....	.....	5.15	.....do.....	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 56.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended September 30th, 1910.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
43	Aug. 8, 1910	H. B. M. supreme court...	.....	.....	.....	58.65	Charged to Gov.....	Subpoena served on an American citizen in a H. B. M. supreme court.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return for the quarter ended December 31st, 1910.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
44	Oct. 19, 1910	United States of America...	M. MacNaughton.....	Obtaining money by false pretences.	.....	.50	Charged to Gov.....	
45	Nov. 26, 1910	.....do.....	Charles Simms.....	Assault and battery.	.....	5.15	.....do.....	

(Signed) D. A. WILSON, Jr.
Marshal United States Court for China.

[Exhibit No. 1, page 58.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended March 31st, 1911.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
46	Feb. 3, 1911	H. B. M. supreme court...	.....	.....	.....	.90	Charged to Gov.....	Subpoena served.
47	do	do	.....	.....	.....	.90	.....	Do.
48	Mar. 7, 1911	do	.....	.....	.....	.90	.....	Do.
49	Mar. 21, 1911	United States of America..	George Collinwood.....	Embezzlement.....	.....	2.65	.....	.....

(Signed) D. A. WILSON,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended June 30th, 1911.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.

No. cases.

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 60.]

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States Court for China, Shanghai, China—Return of suits for the quarter ended September 30th, 1911.

CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
50	July 11, 1911	H. B. M. supreme court.				.90	Charged to Gov.	Subpoena served.
51	Aug. 31, 1911	.....dc.				.90	do.	Do.
52	Sept. 25, 1911	United States of America.	Louis Arnold	Obtaining money by false pretences.		.50	do.	Do.
53	Sept. 26, 1911	.....do.	George W. Thompson	do.		.50		

(Signed) D. A. Wilson, Jr.,
Marshal United States Court for China.

FORM OF RETURN OF THE MARSHAL OF THE UNITED STATES COURT FOR CHINA.

United States court for China, Shanghai, China—Return of suits for the quarter ended December 31st, 1911.
CRIMINAL.

Number of case.	Date of first proceeding.	Name and nationality of plaintiff.	Name of defendant.	Nature of suit.	Amount of fees charged and received.	Amount of fees charged and not received.	Disposition of fees.	Remarks.
54	Oct. 12, 1911	United States of America	Ross Birchett	Arson		\$7.55	Charged to Gov	Subpoena served. Do.
55	Oct. 20, 1911	H. B. M. supreme court				.90	do	
56	Oct. 27, 1911	United States of America	Mrs. W. L. Rodgers	Arson		2.65	do	
57	Nov. 24, 1911	do	C. E. Le Munyon	Polygamy		2.65	do	
58	Nov. 21, 1911	H. B. M. supreme court				.40	do	

(Signed) D. A. WILSON, Jr.,
Marshal United States Court for China.

[Exhibit No. 1, page 62.]

UNITED STATES COURT FOR CHINA.

No. 612.

SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States, under consular court regulations of 1888; fees, sections 98 (court), 99, and 107 (clerk), and under orders of court.

FRACTION QUARTER JULY 11 TO SEPTEMBER 30, 1906.

[Treasury rate for quarter, 522.]

The United States Court for China was created by act of Congress of June 30, 1906 (34 Statutes at Large, 814). The court held its first session on December 17, 1906. The undersigned was appointed clerk of court July 11, 1906. There were no fees, fines, or forfeitures earned or made payable or other collections in the fraction quarter July 11 to September 30, 1906.

(Signed) F. E. HINCKLEY,
Clerk of Court

(From July 11, 1906, to September 29, 1910).

[Exhibit No. 1, page 63.]

UNITED STATES COURT FOR CHINA.

No. 613.

SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1899; fees, sections 98 (court), 99, and 107 (clerk), and under orders of court.

QUARTER ENDING DECEMBER 31, 1906.

[Treasury rate for quarter, 526. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Fees earned from the United States—				
Criminal actions: Court, nil; clerk, \$6.14.....	\$7.64	\$15.12		
Miscellaneous: Clerk, \$1.50.....				
Fees earned from individuals and corporations—				
Civil actions: Court, nil; clerk, \$5.65.....	13.81	26.31		
Criminal actions: Court, nil; clerk, \$2.16.....				
Miscellaneous: Court, nil; clerk, \$6.00.....				
Unearned balance of deposit, civil No. 2, depositor dis-	4.78	9.09		
appeared.....				
Creditor:				
Fees earned from the United States.....			\$7.64	\$15.12
Due to the Treasurer.....			18.59	35.40
	26.23	50.52	26.23	50.52

(Signed) F. E. HINCKLEY,
Clerk of Court.

(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 64.]

UNITED STATES FOR CHINA.

No. 614.

SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING MARCH 31, 1907.

[Treasury rate for quarter, 554. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer December 31, 1906.....	\$18.59	\$35.40	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	265.15	490.73	.....	.....
Criminal: Court, \$120.00; clerk, \$118.05.....				
Estates: Court, \$15.00; clerk, \$0.40.....				
Miscellaneous: Court, nil; clerk, \$11.70.....				
Fees earned from individuals and corporations—				
Civil: Court, \$135.00; clerk, \$83.90.....	476.59	878.98	.....	.....
Criminal: Court, \$105.00; clerk, \$72.49.....				
Estates: Court, \$45.00; clerk, \$19.15.....				
Miscellaneous: Court, nil; clerk, \$16.05.....				
Fines and forfeitures (criminal actions, Nos. 1, 7, 8, 9, 10, 11, 13, 14).....	4,878.00	8,805.00	.....	.....
Creditor:				
Fees earned from the United States.....	.....	.....	\$265.15	\$490.73
Paid to the Treasurer ¹.....	.....	.....	4,878.00	8,805.00
Due to the Treasurer.....	.....	.....	495.18	914.38
	5,638.33	10,210.11	5,638.33	10,210.11

¹ Paid to credit of the Treasurer in the International Bank, Shanghai, as reported in dispatches Nos. 235 to 250, March 18, 1907.

F. E. HINCKLEY,
(From July 11, 1906 to September 29, 1910).

[Exhibit No. 1, page 65.]

UNITED STATES COURT FOR CHINA.

No. 615. SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING JUNE 30, 1907.

[Treasury rate for quarter, 543. Rates of docket items totalling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer March 31, 1907.....	\$495.18	\$914.38	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	27.55	51.07	.....	.....
Criminal: Court, \$15.00; clerk, \$4.35.....				
Estates: Court, nil; clerk, nil.....				
Miscellaneous: Clerk, \$8.20.....				
Fees earned from individuals and corporations—				
Civil: Court, \$90.00; clerk, \$99.02.....	346.78	638.18	.....	.....
Criminal: Court, nil; clerk, \$28.95.....				
Estates: Court, \$75.00; clerk, \$34.65.....				
Miscellaneous: Clerk, \$19.16.....				
Interest on bank deposit ¹	23.64	43.53	.....	.....
Creditor:				
Fees earned from the United States.....			\$27.55	\$51.07
Due to the Treasurer.....			865.60	1,596.09
	893.15	1,647.16	893.15	1,647.16

¹ Official account, clerk of court.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 66.]

UNITED STATES COURT FOR CHINA.

No. 616.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING SEPTEMBER 30, 1907.

[Treasury rate for quarter, 526. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer June 30, 1907.....	\$865.60	\$1,596.09	.....	.....
Fees earned from the United States—				
Civil: Court, \$15.00; clerk, \$6.65.....	42.75	80.94	.....	.....
Criminal: Court, nil; clerk, \$16.90.....				
Estates: Court, nil; clerk, nil.....				
Miscellaneous: Clerk, \$4.20.....				
Fees earned from individuals and corporations—				
Civil: Court, \$90.00; clerk, \$95.45.....	465.20	870.51	.....	.....
Criminal: Court, \$15.00; clerk, nil.....				
Estates: Court, \$165.00; clerk, \$82.40.....				
Miscellaneous: Clerk, \$17.35.....				
Fines (criminal action No. 21).....	60.00	114.07	.....	.....
Creditor:				
Fees earned from the United States.....			\$42.75	\$80.94
Salary of clerk of court, instructions of auditor, June 4, 1907.....			750.00	1,426.98
Due to the Treasurer.....			640.80	1,153.69
	1,433.55	2,661.61	1,433.55	2,661.61

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 67.]

UNITED STATES COURT FOR CHINA.

No. 617.

SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING DECEMBER 31, 1907.

[Treasury rate for quarter, 542. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer September 30, 1907.....	\$640.80	\$1,153.69		
Fees earned from the United States—				
Civil: Court, nil; clerk, \$0.15.....	141.70	262.16		
Criminal: Court, \$30.00; clerk, \$49.05.....				
Estates: Court, nil; clerk, nil.....				
Miscellaneous: Clerk, \$62.50.....				
Fees earned from individuals and corporations—				
Civil: Court, \$45.00; clerk, \$65.75.....	282.10	527.78		
Criminal: Court, nil; clerk, \$1.00.....				
Estates: Court, \$105.00; clerk, \$51.45.....				
Miscellaneous: Clerk, \$13.90.....				
Interest on bank deposit ¹	17.41	32.13		
Creditor:				
Fees earned from the United States.....			\$141.70	\$262.16
Salary of clerk of court, instructions of auditor, June 4, 1907.....			250.00	451.25
Due to the Treasurer.....			690.31	1,262.34
	1,082.01	1,975.75	1,082.01	1,975.75

¹ Official account, clerk of court.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 68.]

UNITED STATES COURT FOR CHINA.

No. 618.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING MARCH 31, 1908.

[Treasury rate for quarter, 466. Rate of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer December 31, 1907.....	\$690.31	\$1,262.34		
Fees earned from the United States—				
Civil: Court, nil; clerk, \$0.20.....	28.05	53.53		
Criminal: Court, nil; clerk, \$24.20.....				
Estates: Court, nil; clerk, nil.....				
Miscellaneous: Clerk, \$3.65.....				
Fees earned from individuals and corporations—				
Civil: Court, nil; clerk, \$11.70.....	39.64	78.01		
Criminal: Court, nil; clerk, \$0.50.....				
Estates: Court, nil; clerk, \$13.75.....				
Miscellaneous: Clerk, \$13.69.....				
Creditor:				
Fees earned from the United States.....			\$28.05	\$53.53
Salary of clerk of court, instructions of auditor, June 4, 1907..	(¹)		512.97	1,100.79
Due to the Treasurer.....			216.98	239.56
	758.00	1,393.88	758.00	1,393.88

¹ Overpaid in computation of exchange; explained in dispatch No. 629, February 1, 1912.

(Signed) F. E. HINCKLEY,
Clerk of Court.

(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 69.]

UNITED STATES COURT FOR CHINA.

No. 619. SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING JUNE 30, 1908.

[Treasury rate for quarter, 443. Rates of docket items totaling items herein are rates of commencing actions severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer March 31, 1908.....	\$216.98	\$239.56	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	17.00	38.36	.....	.....
Criminal: Court, nil; clerk, \$0.90.....			.....	.....
Estates: Court, nil; clerk, \$0.50.....			.....	.....
Miscellaneous, clerk, \$15.60.....			.....	.....
Fees earned from individuals and corporations—				
Civil: Court, nil; clerk, \$7.75.....	62.60	134.30	.....	.....
Criminal: Court, nil; clerk, \$10.30.....			.....	.....
Estates: Court, nil; clerk, \$19.55.....			.....	.....
Miscellaneous, clerk, \$25.00.....			.....	.....
Interest on bank deposit.....	13.70	30.93	.....	.....
Interest on special bank deposit ¹	31.19	57.42	.....	.....
Creditor:				
Fees earned from the United States.....	.....	.....	\$17.00	\$38.36
Salary of clerk of court, instructions of auditor, June 4, 1907.....	.....	.....	50.00	112.84
Due to the Treasurer.....	.....	.....	274.47	349.37
	341.47	500.57	341.47	500.57

¹ Instructions of the auditor, March 4, 1908, rate 543, June quarter, 1907.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 70.]

UNITED STATES COURT FOR CHINA.

No. 620.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING SEPTEMBER 30, 1908.

[Treasury rate for quarter, 427. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer June 30, 1908.....	\$274.47	\$349.37		
Fees earned from the United States—				
Civil: Court, nil; clerk, \$0.45.....	118.20	268.32		
Criminal: Court, \$45.00; clerk, \$16.80.....				
Estates: Court, \$15.00; clerk, \$9.10.....				
Miscellaneous: Clerk, \$31.85.....				
Fees earned from individuals and corporations—				
Civil: Court, \$90.00; clerk, \$53.85.....	601.29	1,338.89		
Criminal: Court, \$15.00; clerk, \$133.39.....				
Estates: Court, \$135.00; clerk, \$71.55.....				
Miscellaneous: Clerk, \$102.50.....				
Forfeiture, criminal action No. 27 ¹	676.36	1,584.00		
Creditor:				
Fees earned from the United States.....			\$118.20	\$286.32
Paid court disbursing officer, forfeiture, criminal No. 27.....			676.36	1,584.00
Due to the Treasurer.....			875.76	1,688.26
	1,670.32	3,540.58	1,670.32	3,540.58

¹ Net after 1 per cent fee debited as earned from individuals and corporations.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 71.]

UNITED STATES COURT FOR CHINA.

No. 621.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING DECEMBER 31, 1908.

[Treasury rate for quarter, 415. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer September 30, 1908.....	\$875.76	\$1,688.26	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	37.70	91.37	.....	.....
Criminal: Court, \$15.00; clerk, \$4.30.....				
Estates: Court, nil; clerk, \$1.40.....				
Miscellaneous: Clerk, \$16.60.....				
Fees earned from individuals and corporations—				
Civil: Court, \$90.00; clerk, \$68.65.....	331.54	741.01	.....	.....
Criminal: Court, nil; clerk, \$0.35.....				
Estates: Court, \$75.00; clerk, \$87.24.....				
Miscellaneous: Clerk, \$10.30.....				
Interest on bank deposits ¹	6.10	24.35	.....	.....
Estates payable to the Treasurer, under order of court:				
Estate No. 2 and estate of Wong Tien.....	1,245.35	3,054.68	.....	.....
Creditor:				
Fees earned from the United States.....			\$37.30	\$91.37
Paid to the Treasurer, instructions from the auditor Octo-				
ber 23, 1908, and January 15, 1909.....			1,245.35	3,054.68
Due to the Treasurer.....			1,213.40	2,453.62
	2,496.05	5,599.67	2,496.05	5,599.67

¹ After deducting interest return to depositors in appeal of criminal action No. 3, Mexican \$28.82.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 72.]

UNITED STATES COURT FOR CHINA.

No. 622.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING MARCH 31, 1909.

[Treasury rate for quarter, 396. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer December 31, 1908.....	\$1,213.40	\$2,453.62	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	24.80	61.57	.....	.....
Criminal: Court, nil; clerk, nil.....				
Estates: Court, \$15.00; clerk, \$5.65.....				
Miscellaneous: Clerk, \$4.15.....				
Fees earned from individuals and corporations—				
Civil: Court, nil; clerk, \$38.34.....	158.06	375.37	.....	.....
Criminal: Court, nil; clerk, \$0.10.....				
Estates: Court, \$60.00; clerk, \$46.90.....				
Miscellaneous: Clerk, \$12.72.....				
Creditor:				
Fees earned from the United States.....			\$24.80	\$61.57
Due to the Treasurer.....			1,371.46	2,828.99
	1,396.26	2,890.56	1,396.26	2,890.56

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 73.]

UNITED STATES COURT FOR CHINA.

No. 623.

SHANGHAI, CHINA, February 1, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99, and 107 (clerk), and under orders of court.

QUARTER ENDING JUNE 30, 1909.

[Treasury rate for quarter, 407. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer March 31, 1909.....	\$1,371.46	\$2,828.99	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	140.80	345.22	.....	.....
Criminal: Court, \$15.00; clerk, \$45.30.....				
Estates: Court, \$15.00; clerk, \$0.45.....				
Miscellaneous: Clerk, \$65.05.....				
Fees earned from individuals and corporations—				
Civil: Court, \$45.00; clerk, \$43.65.....	162.09	378.16	.....	.....
Criminal: Court, nil; clerk, nil.....				
Estates: Court, \$30.00; clerk, \$32.05.....				
Miscellaneous: Clerk, \$11.39.....				
Interest on bank deposit.....	24.71	60.72	.....	.....
Creditor:				
Fees earned from the United States.....	.....	.....	\$140.80	\$345.22
Due to the Treasurer.....	.....	.....	1,558.26	3,267.87
	1,699.06	3,613.09	1,699.06	3,613.09

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906. to September 29, 1910.)

[Exhibit No. 1, page 74.]

UNITED STATES COURT FOR CHINA.

No. 624.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99, and 107 (clerk), and under orders of court.

QUARTER ENDING SEPTEMBER 30, 1909.

[Treasury rate for quarter, 416. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican .
Debtor:				
Due to the Treasurer June 30, 1909.....	\$1,558.26	\$3,267.87		
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	67.29	163.98		
Criminal: Court, \$15.00; clerk, \$4.64.....				
Estates: Court, \$45.00; clerk, \$0.40.....				
Miscellaneous: Clerk, \$2.25.....				
Fees earned from individuals and corporations—				
Civil: Court, nil; clerk, \$335.34.....	398.46	914.70		
Criminal: Court, nil; clerk, \$2.40.....				
Estates: Court, \$30.00; clerk, \$21.85.....				
Miscellaneous: Clerk, \$8.87.....				
Creditor:				
Fees earned from the United States.....			\$67.29	\$163.98
Due to the Treasurer.....			1,956.72	4,182.57
	2,024.01	4,346.55	2,024.01	4,346.55

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 75.]

UNITED STATES COURT FOR CHINA.

No. 625.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888, fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING DECEMBER 31, 1909.

[Treasury rate for quarter, 407. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer September 30, 1909.....	\$1,956.72	\$4,182.57	.....	.....
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.....	84.34	204.68	.....	.....
Criminal: Court, \$45.00; clerk, \$32.19.....				
Estates: Court, nil; clerk, \$0.40.....				
Miscellaneous: Clerk, \$6.75.....				
Fees earned from individuals and corporations—				
Civil: Court, \$15.00; clerk, \$163.64.....	446.25	1,047.59	.....	.....
Criminal: Court, nil; clerk, \$15.69.....				
Estates: Court, \$135.00; clerk, \$115.97.....				
Miscellaneous court; clerk, \$0.95.....				
Interest on bank deposits.....	33.91	83.31	.....	.....
Creditor:				
Fees earned from the United States.....			\$84.34	\$204.68
Due to the Treasurer.....			2,436.88	5,313.47
	2,521.22	5,518.15	2,521.22	5,518.15

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 76.]

No. 626.

UNITED STATES COURT FOR CHINA,
SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

QUARTER ENDING MARCH 31, 1910.

[Treasury rate for quarter, 407. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer December 31, 1909.....	\$2,436.88	\$5,313.47		
Fees earned from the United States—				
Civil: Court, nil; clerk, nil.				
Criminal: Court, nil; clerk, nil.				
Estates: Court, \$15.00; clerk, \$2.65.				
Miscellaneous court, clerk, \$6.75.....	24.40	60.17		
Fees earned from individuals and corporations—				
Civil: Court, \$15.00; clerk, \$7.20.				
Criminal: Court, nil; clerk, nil.				
Estates: Court, \$60.00; clerk, \$76.85.				
Miscellaneous, \$43.21.....	202.26	464.38		
Creditor:				
Fees earned from the United States.....			\$24.40	\$60.17
Paid to the court disbursing officer, fine criminal action No. 21 (net) ¹			59.40	112.93
Due to the Treasurer.....			2,579.74	5,664.92
	2,663.54	5,838.02	2,663.54	5,838.02

¹ After deducting 1 per cent included under fees from individuals and corporations.

(Signed) F. E. HINCKLEY,
Clerk of Court.

(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 77.]

UNITED STATES COURT FOR CHINA.

No. 627.

SHANGHAI, CHINA, *February 1, 1912.*

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888; fees, sections 98 (court), 99, and 107 (clerk), and under orders of court.

QUARTER ENDING JUNE 30, 1910.

[Treasury rate for quarter, 411. Rates of docket items totaling items herein are rates of commencing actions, severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer March 31, 1910.....	\$2,579.74	\$5,664.92	.....	.....
Fees earned from the United States—				
Civil Court, nil; clerk, nil.....	272.16	692.14	.....	.....
Criminal Court, \$120.00; clerk, \$126.66.....				
Estates Court, nil; clerk, \$16.00.....				
Miscellaneous, clerk, \$9.50.....				
Fees earned from individuals and corporations—				
Civil Court, \$30.00; clerk, \$23.05.....	192.67	520.62	.....	.....
Criminal Court, nil; clerk, \$2.50.....				
Estates Court, \$69.00; clerk, \$70.67.....				
Miscellaneous, clerk, \$6.45.....				
Interest on bank deposits.....	26.48	64.43	.....	.....
Fines: criminal actions 40, 42 (net, after deducting the one per cent fee debited under fees earned from individuals and corporations, criminal actions, June quarter, 1910).....	247.50	602.18	.....	.....
Creditor:				
Fees earned from the United States.....			\$272.16	\$692.14
Paid to the court disbursing officer, fine, criminal action No. 42.....			99.00	240.87
Due to the Treasurer.....			2,947.39	6,611.28
	3,318.55	7,544.29	3,318.55	7,544.29

(Signed)

F. E. HINCKLEY,
Clerk of Court.

(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 78.]

UNITED STATES COURT FOR CHINA.

No. 628. SHANGHAI, CHINA, February 3, 1912.

F. E. Hinckley, clerk of court, in account with the Treasurer of the United States under consular court regulations of 1888: fees, sections 98 (court), 99 and 107 (clerk), and under orders of court.

FRACTION QUARTER JULY 1 TO SEPTEMBER 29, 1910.

[Treasury rate for quarter, 425. Rates of docket items totaling items herein are rates of commencing actions severally.]

	Gold.	Mexican.	Gold.	Mexican.
Debtor:				
Due to the Treasurer June 30, 1910.....	\$2,947.39	\$6,611.28		
Fees earned from the United States—				
Criminal: Court, nil; clerk, \$6.40.....	81.17	188.45		
Estates: Court, nil; clerk, \$5.00.....				
Miscellaneous, clerk, \$69.97.....				
Fees earned from individuals and corporations—				
Civil: Court, nil; clerk, \$22.75.....	466.03	1,073.46		
Estates: Court, \$15.00; clerk, \$397.48.....				
Miscellaneous, clerk, \$0.80.....				
Interest on bank deposits, December, 1910, quarter rate 424.....	30.15	71.12		
Estate of W. Blanchard, payable to the Treasurer, order of court.....	29,425.43	66,423.09		
Salary overpaid, March quarter, 1908, computation of exchange ¹	2.39	5.13		
Estate 13: D. Conklin, balance of deposit, depositor disappeared.....	10.30	24.35		
Creditor:				
Fees earned from the United States.....			\$81.17	\$188.45
Paid to the Treasurer, estate of W. Blanchard, instructions of auditor.....			29,425.43	66,423.09
Paid court disbursing officer ¹				
Fine criminal action No. 40, June quarter, 1910, Mex. \$361.30@411 G.....			148.50	361.30
Total balance on closing account with the Treasurer—				
December 16, 1910, Mexican \$7,177.08.....				
December 29, 1910, Mexican \$150.43.....				
October 11, 1911, Mexican \$24.57.....				
February 2, 1912, Mexican \$3.16.....				
February 3, 1912, Mexican \$68.80.....				
Mex. \$7,424.04@445549.....			3,307.76	7,424.04
	32,962.86	74,396.88	32,962.86	74,396.88

¹ Despatch No: 529, February 3, 1912.

(Signed) F. E. HINCKLEY,
Clerk of Court.
(From July 11, 1906, to September 29, 1910.)

[Exhibit No. 1, page 79.]

UNITED STATES COURT FOR CHINA.

Statement of fees earned from individuals and corporations and from the United States, by clerk of court.

[October 1, 1910, to June 30, 1911.]

	Dr. Mexican.		Cr. Mexican.
To fees earned:		By fees uncollected:	
Civil actions.....	\$553.90	Estate actions.....	\$100.14
Estate actions.....	776.68	Miscellaneous earnings.....	.24
Miscellaneous earnings from indi- viduals.....	68.38	Government (criminal).....	95.63
Interests on deposits in bank.....	46.69	Government (miscellaneous).....	61.47
Criminal (charged to Government)...	95.63	By International Bank check No. 71826 to D. A. Wilson, junior, disbursing officer of the United States Court for China...	1,345.27
Miscellaneous (charged to Govern- ment).....	61.47		
	1,602.75		1,602.75

Accounted by—

(Signed.) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, October 12, 1911.

[Exhibit No. 1, page 80.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations from the United States by clerk of court in civil, criminal, estate, and miscellaneous earnings.

[July 1 to September 30, 1911.]

Estate actions.				Civil actions.				Criminal actions.				Miscellaneous earnings.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
5.....	\$0.25	554	\$0.45	97	\$0.10	423	\$0.23	48	\$2.00	423	\$4.73	324	\$1.55	423	\$3.66
117.....	5.70	423	13.47	.....	.....	.....	.....	49	2.00	423	4.73	325	1.55	423	3.66
118.....	.75	423	1.77	.....	.....	.....	.....	50	.10	423	.23	326	1.55	423	3.66
								52	.10	423	.23	327	.20	423	.47
Total....	6.70	.....	15.69	.....	.10	.....	.23	.....	4.20	.....	9.92	.....	4.85	.....	11.45

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 25, 1912.

[Exhibit No. 1, page 81.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States, by clerk of court.

[July 1 to September 30, 1911.]

	Dr. Mexican.		Cr. Mexican.
To fees earned:		By fees uncollected:	
Civil actions.....	\$0.23	Government (criminal).....	\$9.92
Estate actions.....	15.69	Government (miscellaneous).....	11.45
Miscellaneous earnings from individuals.....		By International Bank check No. 71848 to D. A. Wilson, junior, disbursing officer of the United States Court for China.....	15.92
Criminal (charged to Government).....	9.92		
Miscellaneous (charged to Government). 11.45			
	37.29		37.29

Accounted by—

(Signed) JAMES B. DAVIES, Clerk of Court.

SHANGHAI, CHINA, January 25, 1912.

[Exhibit No. 1, page 82.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in civil, criminal, and estate actions.

[October 1 to December 31, 1911.]

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
16.....	\$0.55	554	\$0.99	92	\$3.00	424	\$7.07	50	\$0.40	423	\$0.94
88.....	.85	407	2.08	96	1.60	438	3.65	51	.25	416	.60
89.....	.55	407	1.35	97	18.85	423	44.56	52	4.05	423	9.57
94.....	.25	406	.61	98	21.70	416	52.16	53	11.25	416	27.04
100.....	1.55	411	3.77	99	19.15	416	46.03	54	2.50	416	6.00
105.....	17.95	425	42.23	100	25.60	416	61.53	55	2.60	416	6.25
107.....	.70	424	1.65								
108.....	.85	424	2.00								
111.....	.25	438	.57								
112.....	1.75	438	3.99								
113.....	3.80	438	8.67								
115.....	1.90	438	4.34								
	30.95	.....	72.25		89.90	.....	215.00		21.05	.....	50.40

Forward

[Exhibit No. 1, page 83.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in civil, criminal, and estate actions—Continued.

[October 1 to December 31, 1911.]

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
Brought forward.....	\$30.95	.....	\$72.25		\$89.90	.....	\$215.00		\$21.05	.....	\$50.40
117.....	.50	423	1.18								
118.....	25.75	423	60.87								
120.....	21.30	416	51.20								
121.....	20.90	416	50.36								
122.....	21.20	416	50.96								
Total.....	120.60		286.82		89.90		215.00		21.05		50.40

Accounted by:

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 25, 1912.

[Exhibit No. 1, page 84.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in miscellaneous earnings and fines collected.

[October 1 to December 31, 1911.]

Miscellaneous earnings from individuals.				Miscellaneous earnings from the United States.				Fees collected, earned, in previous quarters in miscellaneous earnings.				Fines collected.			
No.	Gold.	Rate.	Mex-ican.	No.	Gold.	Rate.	Mex-ican.	No.	Gold.	Rate.	Mex-ican.	No.	Gold.	Rate.	Mex-ican.
328.....	\$0.45	416	\$1.08	332	\$0.65	416	\$1.56	317	\$0.10	423	\$0.24	52	\$25.00	423	\$59.10
329.....	4.85	416	11.66	333	1.55	416	3.73	.....	.....	.....	.....	.....	.....	.....	.....
330.....	.55	416	1.32	335	1.05	416	2.52	.....	.....	.....	.....	.....	.....	.....	.....
331.....	1.25	416	3.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
334.....	.10	416	.24	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
336.....	1.55	416	3.73	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	8.75	.....	21.03	.....	3.25	.....	7.81	.....	.10	.....	.24	.....	25.00	.....	59.10

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 25, 1912.

[Exhibit No. 1, page 85.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States, by clerk of court.

[October 1 to December 31, 1911.]

To fees earned:		Dr. Mexican.	By fees uncollected:		Cr. Mexican
Civil actions.....		\$215.00	Estate actions.....		\$4.84
Estate actions.....		286.82	Miscellaneous earnings.....		15.98
Miscellaneous earnings from individuals		21.03	Government (criminal).....		50.40
Interest on deposits in bank.....		55.50	Government (miscellaneous).....		7.81
Criminal (charged to Government)....		50.40	By International Bank check No. 71848 to		
Miscellaneous (charged to Government)		7.81	D. A. Wilson, junior, disbursing officer of		
Fees collected, earned in previous			the United States Court for China.....		616.87
quarters.....		.24			
Fines collected.....		59.10			
		695.90			695.90

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 25, 1912.

[Exhibit No. 1, page 86.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in miscellaneous earnings and bail forfeited.

[January 1 to March 31, 1912.]

Miscellaneous earnings from individuals.				Miscellaneous earnings charged against individuals December quarter, 1911, now charged to the United States.				Bail forfeited in criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
337	\$1.30	434	\$2.99	329	\$4.85	416	\$11.66	57	\$800.00	205/15	¹ \$1,641.20
338	1.35	434	3.11	331	1.25	416	3.00	.....	.....	.....	.....
339	1.35	434	3.11	.....	.....	.....	.....	.....	.....	.....	.....
	4.00		9.21		6.10		14.66		800.00		1,641.20

¹ This bail was paid in gold and converted at the bank rate of 205/15 equals Mexican \$1,641.20.

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, China, April 6, 1912.

[Exhibit No 1, page 87.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States, by clerk of court.

[January 1 to March 31, 1912.]

Dr. Mexican.		Cr. Mexican.	
To fees earned:		By fees uncollected:	
Civil actions.....	\$104.13	Estate actions.....	\$46.93
Estate actions.....	226.06	Miscellaneous earnings.....	6.22
Miscellaneous earnings from individuals.....	9.21	Government (criminal).....	335.11
Criminal (charged to Government)...	335.11	Government (miscellaneous) charged against individuals, December quarter, 1911, now charged to Government.....	14.66
Bail forfeited, gold \$800.00 at bank rate 205/15 equivalent to.....	1,641.20	By International Bank check No. 71860 to D. A. Wilson, junior, disbursing officer of the United States Court for China for Mexican, \$271.59, and cash, Mexican \$1,641.20.....	1,912.79
	2,315.71		2,315.71

Accounted by:

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, April 6, 1912.

[Exhibit No. 1, page 88.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in civil, criminal, and estate actions.

[January 1 to March 31, 1912.]

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
5.....	\$0. 25	554	\$0. 45	77	\$1. 05	427	\$2. 45	52	\$18. 00	423	\$42. 55
62.....	8. 92	443	20. 14	98	3. 00	416	7. 21	53	18. 00	416	43. 26
93.....	. 35	407	. 86	101	19. 95	434	45. 97	54	1. 50	416	3. 60
97.....	1. 90	407	4. 67	102	19. 55	434	45. 05	55	19. 70	416	47. 35
102.....	1. 40	411	3. 40	103	. 80	434	1. 84	56	27. 30	434	62. 90
103.....	. 85	425	2. 00	104	. 70	434	1. 61	57	4. 00	434	9. 21
110.....	2. 60	424	6. 13	.....	.....	.....	.....	58	24. 35	434	56. 10
111.....	1. 15	438	2. 63	.....	.....	.....	.....	59	4. 10	434	9. 44
117.....	16. 40	423	38. 77	.....	.....	.....	.....	60	3. 40	434	7. 83
	33. 82	.....	79. 05		45. 05	.....	104. 13		120. 35	.....	282. 24

Carry forward

[Exhibit No. 1, page 89.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in civil, criminal, and estate actions—Continued.

[JANUARY 1 TO MARCH 31, 1912.]

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
Brot. forward...	\$33. 82	.....	\$79. 05	.....	\$45. 05	.....	\$104. 13	.....	\$120. 35	.....	\$282. 24
119.....	20. 35	416	48. 91	.....	.....	.....	.....	61	. 70	434	1. 61
121.....	1. 85	416	4. 44	.....	.....	.....	.....	62	22. 25	434	51. 26
123.....	21. 15	434	48. 73	.....	.....	.....	.....	.....	.....	.....	.....
124.....	19. 50	434	44. 93	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	96. 67	.....	226. 06	.....	45. 05	.....	104. 13	.....	143. 30	.....	335. 11

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, April 6, 1912.

[Exhibit No. 1, page 90.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in civil, criminal, and estate actions.

APRIL 1 TO JUNE 30, 1912.

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
16.....	\$1.00	\$0.554	\$1.81	97	\$1.55	\$0.423	\$3.66	51	\$19.35	\$0.416	\$46.52
89.....	1.00	.407	2.46	99	3.00	.416	7.21	61	20.35	.434	46.89
103.....	2.75	.425	6.47	102	1.55	.434	3.57	63	27.95	.459	60.89
107.....	16.00	.424	37.74	103	31.35	.434	72.24	64	18.50	.459	40.30
108.....	16.90	.424	39.85	104	28.15	.434	64.86	65	2.00	.459	4.36
111.....	1.25	.438	2.85	105	19.90	.459	43.36	.....	.....	.....	.....
112.....	1.00	.438	2.28	106	1.00	.459	2.18	.....	.....	.....	.....
119.....	5.35	.416	12.86	107	5.30	.459	11.54	.....	.....	.....	.....
120.....	1.75	.416	4.21	108	.70	.459	1.52	.....	.....	.....	.....
121.....	1.15	.416	2.76	.....	.....	.....	.....	.....	.....	.....	.....
122.....	.55	.416	1.32	.....	.....	.....	.....	.....	.....	.....	.....
	48.70	.....	114.61	.....	92.50	.....	210.14	.....	88.15	.....	198.96

Carry forward.

[Exhibit No. 1, page 91.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in civil, criminal, and estate actions—Continued.

[April 1 to June 30, 1912.]

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
Brot. forward...	\$48.70	.....	\$114.61	.....	.....	.....	.....	.....	\$88.15	.....	\$198.96
123.....	.25	\$0.416	.60	.....	\$92.50	.....	\$210.14	.....	.....	.....	.....
125.....	5.20	.459	11.33	.....	.....	.....	.....	.....	.....	.....	.....
126.....	3.65	.459	7.95	.....	.....	.....	.....	.....	.....	.....	.....
127.....	5.00	.459	10.90	.....	.....	.....	.....	.....	.....	.....	.....
Totals.....	62.80	.....	145.39	.....	92.50	.....	210.14	.....	88.15	.....	198.96

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, July 1, 1912.

[Exhibit No 1, page 92.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in miscellaneous earnings and fines collected.

APRIL 1 TO JUNE 30, 1912.

Miscellaneous earnings from individuals.				Miscellaneous earnings charged against Government.				Fines collected in criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
341	\$0.45	459	\$0.98	340	\$0.75	459	\$1.63	51	\$500.00	@51½	
342	.45	459	.98	345	1.70	459	3.70			Rou-	
										bles	
										970.88	
343	.45	459	.98	347	1.70	459	3.70			@102—	\$990.30
344	.35	459	.76					64	150.00	459—	326.79
346	.55	459	1.20								
	2.25		4.90		4.15		9.03		650.00		1,317.09

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, July 1, 1912.

[Exhibit No. 1, page 93.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States, by clerk of court.

APRIL 1 TO JUNE 30, 1912.

Dr.		Cr.	
Mexican.		Mexican.	
To fees earned:		Be fees uncollected:	
Civil actions.....	\$210.14	Estate actions.....	\$6.47
Estate actions.....	145.39	Miscellaneous earnings.....	1.96
Miscellaneous earnings from individuals.....	4.90	Government (criminal).....	152.44
Miscellaneous earnings from Government.....	9.03	Government (miscellaneous).....	9.03
Criminal (charged to Government).....	152.44	By International Bank check No. 71869 to D. A. Wilson, junior, disbursing officer of the United States Court for China, for Mexican, \$1,800.97.....	1,800.97
Criminal (costs collected).....	46.52		
Fines collected.....	1,317.09		
Fees collected earned in previous quarters.....	85.36		1,970.87
	1,970.87		

Accounted by:

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, July 1, 1912.

[Exhibit No. 1, page 94.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in civil, criminal, and estate actions.

JULY 1 TO SEPTEMBER 30, 1912.

Estate actions.				Civil actions.				Criminal actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
5.....	\$0.25	\$0.554	\$0.45	105	\$0.15	\$0.459	\$0.33	45	\$0.10	\$0.424	\$0.23
72.....	.25	.415	.60	108	.30	.459	.65	63	1.00	.459	2.17
119.....	.50	.416	1.20	109	.80	.480	1.66	65	.10	.459	.22
124.....	.25	.434	.57					66	19.80	.459	43.13
125.....	.40	.459	.87					67	2.60	.480	5.42
128.....	1.25	.480	2.60					68	2.15	.480	4.47
129.....	.85	.480	1.77					69	.10	.480	.21
130.....	6.35	.480	13.22					70	2.20	.480	4.58
131.....	4.05	.480	8.43					71	5.20	.480	10.83
	14.15		29.71		1.25		2.64		33.25		71.26

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, October 28, 1912.

[Exhibit No. 1, page 95.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States, by clerk of court in miscellaneous earnings.

JULY 1 TO SEPTEMBER 30, 1912.

No.	Miscellaneous earnings from individuals.		
	Gold.	Rate.	Mexican.
348.....	\$0.55	\$0.480	\$1.15
349.....	1.05	.480	2.18
350.....	2.80	.480	5.83
	4.40	.....	9.16

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, October 28, 1912.

[Exhibit No. 1, page 96.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States by clerk of court.

JULY 1 TO SEPTEMBER 30, 1912.

To fees earned:		Dr. Mexican.	By fees uncollected:		Cr. Mexican.
Civil actions.....		\$2.64	Estate actions.....		\$4.37
Estate actions.....		29.71	Miscellaneous earnings (from individ-		
Miscellaneous earnings (from individ-			uals).....		2.18
uals).....		9.16	Criminal (Government).....		71.26
Criminal (charged to Government).....		71.26	By International Bank check No. 71873 to		
Fees collected, earned in previous quar-			D. A. Wilson, junior, disbursing officer		
ters.....		44.93	of the United States Court for China, for		
			Mexican \$79.89.....		79.89
		157.70			157.70

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, October 28, 1912.

[Exhibit No. 1, page 97.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in miscellaneous earnings.

OCTOBER 1 TO DECEMBER 31, 1912.

Miscellaneous earnings from individuals.				Miscellaneous earnings charged against Government.			
No.	Gold.	Rate.	Mexi- can.	No.	Gold.	Rate.	Mexi- can.
352.....	\$0.45	\$0.490	\$0.92	351.....	\$1.70	\$0.490	\$3.47
3535.....	1.30	.490	2.65	355.....	1.70	.490	3.47
354.....	.60	.490	1.22				
356.....	.10	.490	.20				
357.....	.30	.490	.61				
358.....	1.05	.490	2.14				
	3.80	.....	7.74		3.40	.....	6.94

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 9, 1913.

[Exhibit No. 1, page 98.]

UNITED STATES COURT FOR CHINA.

Summary of fees earned from individuals and corporations and from the United States, by clerk of court.

OCTOBER 1 TO DECEMBER 31, 1912.

To fees earned:		Dr. Mexican.	By fees uncollected:		Cr. Mexican.
Civil actions.....		\$146.29	Civil actions.....		\$0.61
Estate actions.....		109.12	Estate actions.....		25.92
Miscellaneous earnings (from individuals).....		7.74	Miscellaneous earnings (from individuals).....		1.22
Miscellaneous earnings (charged to Government).....		6.94	Miscellaneous earnings (charged to Government).....		6.94
Criminal (charged to Government)....		46.23	Criminal (charged to Government)....		46.23
Fees collected, earned in previous quarters.....		40.90	By International Bank check No. 71887 to D. A. Wilson, junior, disbursing officer of the United States Court for China, for Mexican, \$276.30.....		276.30
		357.22			357.22

Accounted by

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 9, 1913.

[Exhibit No. 1, page 99.]

UNITED STATES COURT FOR CHINA.

Fees earned from individuals and corporations and from the United States by clerk of court in civil, criminal, and estate actions.

OCTOBER 1 TO DECEMBER 31, 1912.

Civil actions.				Criminal actions.				Estate actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
74.....	\$1.50	\$0.407	\$3.69	64	\$0.30	\$0.459	\$0.65	58	\$0.15	\$0.542	\$0.27
77.....	1.20	.427	2.81	67	.85	.480	1.77	72	1.15	.415	2.77
85.....	1.80	.425	4.23	68	.90	.480	1.87	87	.25	.407	.61
106.....	1.50	.459	3.27	69	9.70	.480	20.21	92	1.90	.407	4.67
107.....	.45	.459	.98	72	8.20	.490	16.73	104	.40	.425	.94
108.....	12.86	.459	28.02	73	1.80	.490	3.67	114	1.40	.438	3.20
110.....	4.97	.490	10.14	74	.65	.490	1.33	119	2.15	.416	5.17
111.....	1.10	.490	2.24					121	.15	.416	.36
112.....	.30	.490	.61					122	1.40	.416	3.36
113.....	20.00	.490	40.82					123	.15	.434	.34
	45.68		96.81		22.40		46.23		9.10		21.69

Carry forward.

[Exhibit No. 1, page 100.]

Brought forward.

Civil actions.				Criminal actions.				Estate actions.			
No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.	No.	Gold.	Rate.	Mex.
.....	\$45. 68	.....	\$96. 81	.....	\$22. 40	.....	\$46. 23	.....	\$9. 10	.....	\$21. 69
114.....	18. 95	\$0. 490	38. 67	.....	.....	.....	.....	125.....	. 30	\$0. 459	. 65
115.....	1. 10	. 490	2. 24	.....	.....	.....	.....	126.....	1. 10	. 459	2. 40
116.....	1. 15	. 490	2. 35	.....	.....	.....	.....	128.....	5. 00	. 480	10. 42
117.....	1. 10	. 490	2. 24	.....	.....	.....	.....	129.....	5. 50	. 480	11. 45
118.....	1. 05	. 490	2. 14	.....	.....	.....	.....	130.....	1. 00	. 480	2. 08
119.....	. 90	. 490	1. 84	.....	.....	.....	.....	131.....	. 80	. 480	1. 66
.....	.....	.....	.....	.....	.....	.....	.....	132.....	5. 90	. 480	12. 04
.....	.....	.....	.....	.....	.....	.....	.....	133.....	8. 20	. 490	16. 73
.....	.....	.....	.....	.....	.....	.....	.....	134.....	7. 55	. 490	15. 41
.....	.....	.....	.....	.....	.....	.....	.....	135.....	. 50	. 490	1. 02
.....	.....	.....	.....	.....	.....	.....	.....	136.....	6. 30	. 490	12. 86
.....	.....	.....	.....	.....	.....	.....	.....	137.....	. 35	.....	. 71
.....	69. 93	.....	146. 29	.....	22. 40	.....	46. 23	.....	51. 60	.....	109. 12

Accounted by—

(Signed) JAMES B. DAVIES,
Clerk of Court.

SHANGHAI, CHINA, January 9, 1913.

[Exhibit No. 1, page 101.]

UNITED STATES COURT FOR CHINA.

Estate No. 62: W. Blanchard.

No. 3265.] SHANGHAI, CHINA, September 19, 1910.

The honorable the TREASURER OF THE UNITED STATES,
Washington.

SIR: Captain William Blanchard, an American citizen, who was for many years a pilot at Tientsin, China, died on February 20, 1908, in London, England, leaving an estate in China which has been administered under the direction of the United States Court for China by John M. Dickinson, a friend and associate of the deceased whose nationality is understood to be Danish. No will has been found, and, after diligent search, no heirs of the deceased have been found.

On the application of Mr. Dickinson the court ordered that he pay into court a portion of said estate, namely, Tientsin taels 45,000.00, and Mr. Dickinson paid this sum into court on February 26, 1910, by depositing it in my official account in the Hongkong and Shanghai Banking Corporation at Tientsin, China. I have applied to the court for authority and direction to pay this sum into the Treasury of the United States under Revised Statute 1709. In view of the probable granting of this request, I have respectfully to inquire in what form the payment into the Treasury shall be made.

The sum referred to with its accruing interest,

[Exhibit No. 1, page 102.]

forms the larger portion of the estate. The remainder is in the care of Mr. Dickinson as administrator pending the determination of an action in bankruptcy in this court (civil action No. 77; re S. H. Comstock, in bankruptcy), in which the estate of Captain Blanchard is a creditor. It is probable that upon the determination of the bankruptcy action a final order of distribution of the estate of Captain Blanchard will be made and that the residue of his estate will also be paid into the Treasury.

I am, sir, your obedient servant,

(Signed) F. E. HINCKLEY,
Clerk of Court.

[Exhibit No. 1, page 103.]

Enclosure No. 1 in No. 103: Nov. 17, 1910.

UNITED STATES COURT FOR CHINA.

Estate Action No. 62: Estate of William Blanchard.

Certified copy of decree for deposit of funds of estate in the Treasury of the United States.

[Exhibit No. 1, page 104.]

IN THE UNITED STATES COURT FOR CHINA.

Estate of William Blanchard.	{	Estate action No. 62: Original. Paper No. —. Filed at Shanghai, October 29, 1910. EDW. H. MURRAY, <i>Clerk of Court.</i>
------------------------------	---	-----------------------------------------------------------------------------------------------------------------------------------

Decree for deposit of funds of estate in the Treasury of the United States.

Whereas at Tientsin, China, on February fourth, 1910, John M. Dickinson, administrator of the estate of William Blanchard, a citizen of the United States of America, resident in Tientsin, China, and pursuing the occupation of a marine pilot at Taku, near said Tientsin, deceased, in London, England, on February twentieth, 1908, appeared before the court and showed that after diligent search no will of said deceased and no heirs of said deceased had been found; and whereas said administrator for the purpose of safe-keeping pending the final settlement of said estate, the sum of Tientsin taels forty-five thousand (Tientsin taels 45,000.00) applied to pay said sum into court; and whereas said sum of Tientsin taels forty-five thousand (Tientsin taels 45,000.00) was, in compliance with an order granting said application, paid by said J. M. Dickinson, administrator, into the official account of F. E. Hinckley, clerk of the United States court for China, in the Hongkong and Shanghai Banking Corporation at Tientsin, China, on February twenty-six, 1910; and whereas, said F. E. Hinckley, clerk of court, has applied to be relieved of the responsibility of

[Exhibit No. 1, page 105.]

caring for such funds; and whereas from the records of the estate it appears that said sum of Tientsin taels forty-five thousand (Tientsin taels 45,000.00) may now be made subject to a decree of final distribution:

It is by the court ordered that said F. E. Hinckley, clerk of court, be and he is hereby authorized and directed after deducting court fees due for receiving, keeping and paying out said sum of Tientsin taels forty-five thousand (Tientsin taels 45,000.00) to pay into the Treasury of the United States the residue thereof with interest accruing on said sum of Tientsin taels forty-five thousand (Tientsin taels 45,000.00) to be held in trust for the legal claimant, should such a legal claimant appear and demand the same under the statutes and laws of the United States.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

SHANGHAI, CHINA, October 29, 1910.

[Exhibit No. 1, page 106.]

IN THE UNITED STATES COURT FOR CHINA.

Certificate.

I, Edward H. Murray, clerk of the United States Court for China, hereby certify that I have compared with the original of record in the registry of the court, the copy of a document hereto attached under seal of court, namely:

United States Court for China. Estate Action No. 62: Estate of William Blanchard, certified copy of decree for deposit of funds of estate in the Treasury of the United States, October 29, 1910; and that I find the same to be a true copy and of the whole of said original.

Witness the seal of court, with my hand hereunto set, at Shanghai, China, October twenty-ninth, 1910.

[SEAL.]

(Signed)

EDW. H. MURRAY,
*Clerk of Court.**Certificate.*

I, Rufus H. Thayer, judge of the United States Court for China, do hereby certify that Edward H. Murray is now, and was at the time of certifying as above, clerk.

[Exhibit No. 1, page 107.]

of the United States Court for China, and that the attestation of said clerk of court is in due form of law and by the proper officer.

In witness whereof I subscribe my name at Shanghai, China, this twenty-ninth day of October, 1910.

(Signed)

RUFUS H. THAYER,
*Judge of the United States Court for China.**Certificate.*

I, Edward H. Murray, clerk of the United States Court for China, hereby certify that Honorable Rufus H. Thayer, is now and was at the time of certifying as above judge of the United States Court for China, duly commissioned and qualified and that, as such, full faith and credit are due all his official acts, and that the above signature is his true signature.

Witness the seal of court with my hand hereunto set at Shanghai, China, October twenty-ninth, 1910.

[SEAL.]

(Signed)

EDW. H. MURRAY,
Clerk of Court.

[Exhibit No. 1, page 108.]

No. 656.]

UNITED STATES COURT FOR CHINA,
SHANGHAI, CHINA, *February 16, 1912.**Estate No. 62: W. Blanchard.*The Honorable the TREASURER OF THE UNITED STATES,
Washington.

SIR: I have the honor to enclose herewith certified copy of a decree of this court dated January 18, 1912, directing that I remit to you the balance of the money collected in the estate of William Blanchard, an American citizen dying intestate in China, leaving no heirs or next of kin that could be found. Previous remittance was made to you in this estate by my predecessor's despatch No. 103 dated November 17, 1910.

I enclose herewith first of exchange of New York draft No. 12/142 for gold \$539.89 and 12/155 for \$6.76, making a total of \$546.75, which is made up as follows:

Tientsin taels, 845.26.....	Mex. \$1, 202. 22
Balance from deposit on account of costs.....	6. 09
	<hr/>
	1, 208. 31
Less 1 per cent of \$1,202.22, court fee.....	120. 22
	<hr/>
	1, 088. 09
\$1,088.09 at current rate of exchange, gold.....	546. 75

The second of exchange goes to you via Siberia. Kindly send receipt in duplicate for the amount of these drafts.

I have the honor to be, sir, your obedient servant,
(Signed)

JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 1, page 109.]

UNITED STATES COURT FOR CHINA.

Estate action No. 62: Estate of William Blanchard.

Certified copy of order.

[Exhibit No. 1, page 110.]

IN THE UNITED STATES COURT FOR CHINA.

Estate of William Blanchard.	{	Estate action No. 62, original. Paper No. —. Filed
		at Shanghai, January 18, 1912.

JAMES B. DAVIES,
Clerk of Court.

Order.

Whereas it appears by the final report of J. M. Dickinson, administrator of the above estate, filed with this court on March 14, 1911, that there remained a balance belonging to said estate of Tientsin taels 845.26 after the payment of all claims against said estate, which said sum was remitted to the clerk of this court, to be held by him pending the settlement of the insolvent estate of S. H. Comstock, against which the above estate had a claim;

And whereas said Comstock estate has now been fully settled and determined and nothing found to be due this estate therefrom.

Now, therefore, it is ordered that the clerk of this court be, and he hereby is, authorized and directed, after deducting the court fees due for receiving, keeping, and paying out the said sum of Tientsin taels 845 26, to pay to the Treasury of the United States the residue thereof, in accordance with the terms of a previous decree of this court dated October 29, 1910.

It is further ordered and decreed that said final account of J. M. Dickinson, administrator, be, and hereby is, approved and said J. M. Dickinson discharged from further duties as such administrator.

(Sg'd)

RUFUS H. THAYER, *Judge.*SHANGHAI, CHINA, *January 18, 1912.*

[Exhibit No. 1, page 111.]

IN THE UNITED STATES COURT FOR CHINA.

Certificate.

I, James B. Davies, clerk of the United States Court for China, hereby certify that I have compared with the original of record in the registry of the court the copy of a document hereto attached under seal of court, namely—

United States Court for China. Estate Action No. 62: Estate of William Blanchard, certified copy of order, January 18, 1912;
and that I find the same to be a true copy and of the whole of said original.

Witness the seal of court with my hand hereunto set at Shanghai, China, January eighteenth, 1912.

[SEAL.]

JAMES B. DAVIES,
Clerk of Court.

Certificate.

I, Rufus H. Thayer, judge of the United States Court for China, do hereby certify that James B. Davies is now and was at the time of certifying as above, clerk

[Exhibit No. 1, page 112.]

of the United States Court for China, and that the attestation of said clerk of court is in due form of law and by the proper officer.

In witness whereof I subscribe my name at Shanghai, China, this eighteenth day of January, 1912.

(Signed) RUFUS H. THAYER,
Judge of the United States Court for China.

Certificate.

I, James B. Davies, clerk of the United States Court for China, hereby certify that Honorable Rufus H. Thayer, is now, and was at the time of certifying as above, judge of the United States Court for China, duly commissioned and qualified, and that, as such, full faith and credit are due all his official acts, and that the above signature is his true signature.

Witness the seal of court with my hand hereunto set at Shanghai, China, January eighteenth, 1912.

[SEAL.]

(Signed) JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 1, page 113.]

OFFICES OF AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.

MEMORANDUM FOR THE TREASURER OF THE UNITED STATES.

JUNE 22, 1912.

The amount of \$51.08 to be covered into the Treasury in the name of James B. Davies, clerk of United States Court for China, to the credit of estate of decedents' trust fund and to the personal credit of the estate of William Blanchard, deceased.

Also to the personal credit of the said clerk of court on account of miscellaneous receipts.

Please forward duplicate certificate of deposit to this office.

[Exhibit No. 1, page 114.]

UNITED STATES COURT FOR CHINA,
SHANGHAI, CHINA, *November 24, 1908.*

No. 1524.]

The honorable the TREASURER OF THE UNITED STATES,
Washington, U. S. A.

SIR: Under instructions (initialed A. C. L.) dated October 23, 1908, from the Acting Auditor of the Treasury Department, authorizing me to pay to your order by bank draft or bill of exchange the residue in court of the estate of Cossette Denvers, an American citizen, which under decree of this court of August 21, 1908, was declared an escheat to the United States, I enclose International Banking Corporation, first of exchange draft No. 7/368 on New York for gold \$1,229.89 endorsed payable to the order of the Treasurer of the United States.

The amount of the face of the draft is computed as follows:
1908.

	Dr.	Cr.
Sept. 18. Paid into court by U. S. consul general at Shanghai, appointed by the court ex officio administrator, Mexican \$3,022.19, at 554.....		\$1, 674. 29

[Exhibit No. 1, page 115.]

	Dr.	Cr.
Forward.....	\$1, 674. 29	
1908.		
Nov. 20. Interest on current deposit in International Bank, Shanghai, Mexican \$3,022.19, at 2 per cent.....	5. 78	
	<hr/>	
	1, 680. 07	
Nov. 20. Less balance of court fees on closing probate docket, Mexican \$24.44.		\$13. 54
Balance at credit for payment into the Treasury, Mex- ican \$3,008.18, at 554.....		1, 666. 53
	<hr/>	
	1, 680. 07	1, 680. 07

The rates were 5525 and 74. The rate at which the estate is computed in the probate docket is the Treasury rate for the quarter in which the estate was brought into court—that is, the March quarter, 1908—that rate being 554.

I have respectfully to request receipt in duplicate.

I am, sir, your obedient servant,

(Signed) F. E. HINCKLEY,
Clerk of Court.

[Exhibit No. 1, page 116.]

JANUARY 30, 1911.

A. O. L.
FRANK E. HINCKLEY, Esquire,
Clerk United States Court for China,
Shanghai, China.

SIR: Your accounts for the quarter ended June 30, 1910, have been settled by cert. No. 7173, diplomatic fiscal officers, as follows:

Salary, 1910, balance due to the United States.....	\$768. 93
Miscellaneous receipts, fees, and costs, judicial, balance due to the United States.....	40. 77
Sum of balances due to the United States.....	809. 70
No statement of account by you.....	
Difference.....	809. 70

- Thus explained:
1. Amount of your draft on the Secretary of State, dated April 30, 1910, on account of salary from April 1 to 30, 1910, paid and charged in settlement, and suspended for a statement of your salary account, as clerk of court..... 268. 93
 2. Amount receipted for by you from yourself as disbursing officer for the period from May 1 to June 30, 1910, charged to you, and suspended as in item No. 1..... 500. 00
 3. Item of difference No. 2, of office letter of February 14, 1908, *now disallowed*, being for interest earned on deposit of Government funds as reported by you July 27, 1907..... 31. 19
800. 12

[Exhibit No. 1, page 117.]

- Brought forward.....\$800.12
4. Item of difference # 2 of office letter of May 1, 1909, being for one per cent of the sum of \$1,600.00 Mex. forfeited as security on the bail bond of Frederick Hudson, retained by you in September quarter, 1908, as your fee, *now disallowed*..... 6. 83
 5. Amounts retained by you on collections in June quarter, 1910, for clerk's *one per cent fee* on the said collections as follows: Suspended for anything you may have to offer showing why the amounts should not be disallowed:

Fine on George F. Curtis, attorney	\$0. 25
Fine in case of U. S. v. Mike Kossack.....	1. 50
Fine in case of U. S. v. Harry Ross	1. 00
	2. 75

Explained difference..... 809. 70

You will please to forward your statement of account and vouchers for the quarter ended June 30, 1910, and your accounts as clerk for each quarter thereafter.

You probably have a voucher for loss by exchange on your draft for \$268.93, which you have not furnished, and the law requires the rendition of quarterly accounts within twenty days after the period to which they relate. (28 Stats., 209.)

The above items of difference Nos. 3 and 4, aggregating \$38.02, are now *disallowed*, and I will thank you to credit the United States with the said amount in your next accounts.

If you shall have nothing further to offer in regard to item # 5, of \$2.75, you will also please to credit the United States with this amount.

Referring to above items 4 and 5, your retention of one per cent on moneys of the Government received by you, I will

[Exhibit No. 1, page 118.]

state that you are not authorized to deduct a fee from Government funds.

Referring to your letter of July 14, 1910, in response to the request of this office of June 4, 1908, stating that you were ready to pay all fees into the Treasury as soon as your accounts are approved, I have to state that the returns of said fees of the court have not as yet been received at this office. You stated that you would endeavor to obtain approval of the accounts at the earliest date practicable.

This office has to remind you that itemized statements and returns should be made by you of all the fees taxed and received from individuals and parties outside of the Government, in the court and for the clerk of the court, from the beginning of your service. (34 Stats. 816.)

The attention of the Department of State has this day been invited to the matter of the preparation of blanks suitable for the rendition of your accounts and of the fees of your office, and also of the nonreception of the necessary court returns of fees.

Respectfully,

(Signed) G. W. ESTERLY,
Acting Auditor.
CHB.

[Exhibit No. 1, page 119.]

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR STATE AND OTHER DEPARTMENTS,
Washington, January 30, 1911.

In replying, quote initials A. O. L.]

The honorable the SECRETARY OF STATE,
Washington, D. C.

SIR: I have the honor to enclose herewith for the information of the Department of State press copies of two letters of the above date addressed to the clerk and disbursing officer of the court for China, Mr. Frank E. Hinckley, in regard to the settlement of his accounts for the quarter ended June 30, 1910, and in connection with this subject I would beg leave to request that suitable blanks be prepared for the rendition of the accounts of the court and submitted to the Comptroller of the Treasury for his approval.

And I would also beg leave to suggest the advisability of an inspection being made as soon as practicable of the records of the court at Shanghai by a person competent to cause complete and satisfactory returns of the business of the court.

Respectfully,

G. W. ESTERLY, Acting Auditor.
C. H. B.

(2 enclosures.)

[Exhibit No. 1, page 120.]

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR STATE AND OTHER DEPARTMENTS,
Washington, February 28, 1911.

In replying quote initials A. O. L.]

The honorable the SECRETARY OF STATE,
Washington, D. C.

SIR: Referring to the letter of this office of January 30, 1911, and enclosures, relative to the accounts of Mr. Frank E. Hinckley, clerk of the United States Court for China, and in which it was suggested the advisability of an inspection of the records of the court at Shanghai with a view to causing a complete and satisfactory return of the fees of the court to be made, and referring also to the oral message from Mr. Morrison sent by Mr. Merritt that this office prepare such information as will serve in making the inspection which the department has decided to intrust to an officer already at or near the court, I have the honor to submit the following:

Mr. Hinckley entered upon his duties as clerk of the court July 11, 1906. A letter has been received from him dated December 19, 1910, which he has signed as "Retiring as clerk of court September 30, 1910." A full and complete official report of his fees and earnings and those of the court have never been received from him.

I enclose herewith a statement marked No. 1, which shows

[Exhibit No. 1, page 121.]

all the moneys which have been reported by him up to June 30, 1910.

Mr. Hinckley was requested by this office June 4, 1908 (enclosure No. 2), to forward complete reports of all the fees taxed and received by him and payable into the Treasury under section 9 of the act of June 30, 1906 (34 Stats. L., 816), and in future to render a similar report to accompany each of his quarterly accounts.

Section 9 of the statute reads as follows:

"The tariff of fees of said officers of the court shall be the same as the tariff already fixed for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States."

Mr. Hinckley replied to the letter of June 4, 1908, on July 18, 1908 (enclosure No. 3), in which he states that the instructions will receive his early attention, etc.

He stated in his letter of August 11, 1909 (enclosure No. 4), that an account of the official funds of the clerk of the court was then in course of preparation.

Under date of July 14, 1910, in a lengthy letter relative to some items of difference in his accounts, he stated in the last paragraph of the letter that "Under 34 Stat., 814, section 9, I am due to pay all fees into the Treasury. I am ready to do so as soon as my accounts are approved. I will endeavor to obtain approval at the earliest date practicable."

Enclosed is also a copy of the letter of this office, dated January 30, 1911, addressed to Mr. Hinckley, upon the settlement

[Exhibit No. 1, page 122.]

of his accounts for the quarter ended June 30, 1910 (enclosure No. 5), to the contents of which I invite especial attention.

I will add to the information upon this subject a copy of the decision of the Comptroller of the Treasury, dated April 20, 1910 (XVI Comp. Dec., 658) (enclosure No. 6), in regard to the disposition which must be made of the fees taxed and collected in the court.

I have also to state for the information of the inspector that Messrs. E. H. Murray and D. A. Wilson, jr., who served as marshal to the court, the former from November 6 to December 27, 1909, and the latter from December 28, 1909, to April 30, 1910, have not made any report of marshal's fees.

Respectfully,

G. W. EASTERLY,
Acting Auditor.
C. H. B.

(6 enclosures.)

[Exhibit No. 1, page 123.]

SEPTEMBER 8, 1910.

FRANK E. HINCKLEY, Esquire,
*Special Disbursing Officer of the Department of State for the
 United States Court for China, Shanghai, China.*

SIR: Your accounts for the quarter ended March 31, 1910, have been settled by Cert. No. 6322, diplomatic fiscal officers, as follows:

Salaries and expenses of court, 1910, balance due from the United States...	\$320. 20
Miscellaneous receipts, fees, and costs, judicial balance due to the United States.....	127. 13
Net balance due from the United States.....	193. 07
Balance claimed due from the United States by your account (to compradore).....	257. 49
Difference.....	64. 42

Thus explained:

1. Your charge of amount paid Charles H. Williams, February 2, 1910, for per diem compensation for eight days, at the rate of \$5.00 per day, as special assistant to deputy marshal, Tientsin, China, suspended for a copy of his appointment and explanation why he was designated special assistant to the deputy marshal, Mex., 98.29, \$0.407	40. 00
2. Your charge of payment to Judge Rufus H. Thayer, for hotel bill at Hongkong from March 19 to 26, 1910, suspended for explanation as to the necessity for the judge to remain at Hongkong at public expense during this period longer than the other officers of the court on their return from Canton, Mex., 120.00, .407.....	48. 84
	88. 84

[Exhibit No. 1, page 124.]

Brought forward..... \$88. 84

Less:

A. Amount of your short charge of court expenses, presumably of one of the passages of the prisoner, Faulkner, between Shanghai and Tientsin, Mex. 60.00 .407.....	24. 42
--------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------

Explained difference..... 64. 42

Referring further to above item A of \$60 Mexican, if you find that the compradore failed to include this amount in his account from which account you took into your account the disbursements for the quarter, you will please to debit the United States with the amount of \$24.42 in your next disbursing account.

The compradore should furnish you an itemized abstract of his payments to accompany each of your quarterly accounts.

Referring to item #1 of \$40, I will state that there does not appear to be any provision of law to pay a per diem compensation of \$5 except to a deputy marshal, and Mr. Williams being a marshal to the consular court at a salary of \$1,000 per annum his appointment would have to be shown to the accounting officers to perform a service for which his per diem compensation is provided for by law or regulation.

And as to item #2, I will thank you to explain the necessity of the judge's stay in Hongkong for one week longer than the other officers, and I will be obliged if you will in future accompany your accounts with explanations when apparently necessary for the understanding of the accounting officers.

Respectfully,

(Sg'd)

AUDITOR.

[Exhibit No. 1, page 125.]

UNITED STATES COURT FOR CHINA.

SHANGHAI, CHINA, *October 15, 1910.*

No. 35.]

FRANK E. HINCKLEY, Esquire,
Late Special Disbursing Officer,
Department of State, United States Court for China, Shanghai, China.

SIR: In reference to explanation required by the Auditor of the Treasury for the Department of State as to the necessity for my remaining in Hongkong from March 19 to 26, 1910, one week longer than the district attorney and stenographer of court, I beg to say that the actual session of the court at Canton having closed, the active duties of those two officers had ceased, and they, therefore, took the first steamer back after returning from Canton to Hongkong. It is understood, of course, that Hongkong is a British colony and that this court has no function there, but one must go to Hongkong in going to and from Canton. Before the immediate sailing day after return to Hongkong from Canton of the next steamer on the line on which we were ticketed and almost at the date of sailing, the excursion steamer *Cleveland*, with some eight hundred Americans on board arrived in Hongkong. The manager of this excursion had arranged for visits of this large number of American tourists to Canton in relays of one hundred and fifty to two hundred *per day*, and much alarm was felt in all quarters over the possible troubles that might arise in the city of Canton by the visit of such a large number of foreigners at the same time. There had recently been some very serious disturbances in Canton, and conditions at the time were in a very unsettled state in that city. The consulate in Canton was in charge of a

[Exhibit No. 1, page 126.]

very capable but a very young man. He, acting upon instruction, I presume, was discouraging such visits, and the local Chinese authorities had practically declared that they were unable to assure protection. I was urged to remain in or near Canton until the incident was over. The district attorney had engagements which did not permit him to postpone his return. All the meager hotel accommodations available at Canton had been preempted, Hongkong is only ninety miles distant from Canton, with steamer connection twice a day. Yielding to what appeared to be a reasonable request which the district attorney urged, I waited over one steamer, at which time the incident was over, and fortunately without any undue event. I had visited Canton in obedience to the requirements of the statute. In view of quite possible trouble it seemed wiser to incur the small charge of a week's personal expense than to run the somewhat serious risk of having shortly to repeat the visit from Shanghai at great expense and at serious inconvenience to the court and its business.

I note also that explanation is desired with reference to the amount paid Charles H. Williams on February 2, 1910, for *per diem* compensation for eight days, at the rate of five dollars *per day*, as special assistant to the deputy marshal at Tientsin, China. The appointment of Mr. Williams was made and his services as deputy marshal rendered with the consent of the consul general.

The period for which this expenditure was made covers the period of trial of Frederick Taylor Faulkner on the charge of embezzlement at Tientsin and the few days that succeeded that trial until the prisoner could be sent to the jail for American convicts at Shanghai. At that time the newly appointed marshal of this court had not arrived in China and Mr. Edward H. Murray, the stenographer of the court, was acting as deputy marshal. During the course of this trial and the further period stated "he was not only acting as stenographer of the court but as deputy marshal and also as deputy clerk of the court. It was physically impossible for him to have

[Exhibit No. 1, page 127.]

charge of the prisoner to and from the jail and court and perform his other duties. Every moment of his time was consumed in writing up his minutes as deputy clerk and in his reporting proceedings of the court in other cases which followed the Faulkner case. The consul general at Tientsin who, prior to the opening of the session of the court had been responsible for the prisoner, had deemed it necessary for his safe keeping to send him to Peking and have him placed in charge of the marine guard of the legation, rumors having been current that an effort would be made to secure his escape from the British jail in Tientsin.

In view of these rumors and of the scandal that would follow a possible escape of the prisoner, exceptional provisions were necessary. After conviction a few days elapsed before the departure of the next boat for Shanghai. It was midwinter, the river was frozen at Tientsin and no boats were running except from Chingwangtao, eight hours by rail from Tientsin. It was not deemed safe to send the prisoner to Chingwangtao in the custody of Mr. Murray alone. The prisoner was a strong, athletic man and thought to be somewhat desperate. He had borne himself in an ugly manner during trial and the court regarded that special provisions for his security were necessary. Under all these circumstances the court deemed it absolutely necessary to appoint some one to have immediate charge of the prisoner and to assist in putting him safely on the steamer. Practically there was no one else whom the court could designate for this duty other than Mr. Williams, who was marshal for the consulate and known by the court to be responsible.

I make this explanation as you were not personally present and could not have personal knowledge of the facts stated.

Very respectfully,

RUFUS H. THAYER, *Judge.*

[Exhibit No. 1, page 128.]

Voucher No. 260.

No. 2808.]

SHANGHAI, CHINA, *March 31, 1910.*

The United States Court for China in account with Honorable Rufus H. Thayer, judge of the court.

For actual and necessary personal expenses on circuit to Canton, incurred under 36 Statutes, page 672, March 4 to 29. 1910, twenty-six days, not to exceed gold \$10.00 a day.

1910.	Mex. Dr.	Mex. Cr.
Mar. 3. To Pacific Mail Steamship Company, one first-class return passage Shanghai to Hongkong: voucher No. 1...	\$99.00	
To service on board S. S. "Manchuria"; no voucher	5.00	
To table water on board S. S. "Manchuria": no voucher..	3.00	
No ticket to Canton: no voucher.....	8.00	
To food on steamer to Canton and return; no voucher...	6.00	
To chair and baggage to hotel at Canton; no voucher....	4.00	
12. To Victoria Hotel, Canton, board and lodging, chits and mineral waters; voucher No. 2.....	46.58	
26. To Hongkong Hotel, Hongkong, board and lodging from March 7 to 26, inclusive; voucher No. 3.....	287.83	
	<hr/>	
Forward.....	459.41	

No. 2808.]

[Exhibit No. 1, page 129.]

Voucher No. 260.

	Mex. Dr.	Mex. Cr.
1910. Brought forward.....	\$459. 41	
Mar. 26. To services of baggage porters at Hongkong; no voucher.....	. 40	
To services on board S. S. "Chiyo Maru"; no voucher.....	5. 00	
To table waters on board S. S. "Chiyo Maru"; no voucher.....	3. 10	
To services of baggage porters to and from steamer, Shanghai; no voucher.....	4. 00	
To 2% loss by exchange on expenditure on Hongkong dollars, \$352.81.....	7. 06	
Mar. 29. Balance due.....		\$478. 97
	478. 97	478. 97

NOTE.—The statutory allowance of gold, \$10.00 a day for March 4 to 29, 26 days, or gold, \$10.00, at Treasury rate, March quarter, 1910, namely 407, equal to Mex. \$638.82.

The expenses accounted are.....	Mex. \$478. 97	
At 407 equal.....		gold.. \$194. 94
The unexpended balance of the allowance is.....	159. 85	
At 407 equal to.....		gold.. 65. 06
	Mex. 638. 82	gold.. 260. 00

Accounted by

(Signed) F. E. HINCKLEY,
Clerk of Court.

[Exhibit No. 1, page 130.]

HONGKONG, March, 1910.

No.

Original Voucher No. 3.

Judge Thayer, R. 124/125 (?C\$) 20 Dr. to Hongkong Hotel Co., Ld.

Date.	Board and lodging.	Chits.	Cash.	Total.
Mar. 7	\$13. 33	.....	.....	\$13. 33
8	20	.....	.....	20
12	6	.....	.....	6
13	20	.....	.....	20
14	20	.....	.....	20
15	10	.....	.....	10
16	{ 3. 33	.....	.....	} 16. 66
	13. 33	.....	.....
17	20	.....	.....	20
18	20	.....	.....	20
19	13. 34	.....	.....	13. 34
				159. 33
	Launch in and out.....	.....	.....	2
				161. 33
	Less launch out.....	.....	.....	1. 00
				160. 33

[Exhibit No. 1, page 131.]

No.

HONGKONG, *March, 1916.*

Judge Thayer, R. 124, 127, and 128, dr. to Hongkong Hotel Co., Ltd.

Date.	Board and lodging.	Chits.	Cash.	Total.
Mar. 19	\$6	.....	.....	\$6
20	18	.....	.....	18
21	18	.....	.....	18
22	18	.....	.....	18
23	18	.....	.....	18
24	18	.....	.....	18
25	18	.....	.....	18
26	6	.....	.....	6
	Launch off.	.....	.....	120 1
	Previous a/c	.....	.....	121 160.33
	Chits, \$6.50.	.....	.....	281.33 6.50
				287.83

Hongkong Hotel Co., Ltd.
Received payment.
(Stamp.)

(Signed) SCHE TING,
26/3/10.

[Exhibit No. 1, page 132.]

Mexican \$478.98.]

SHANGHAI, CHINA. *March 31. 1910.*

Receipt.

Received of F. E. Hinckley, disbursing officer of the court, in full of account for my actual and necessary personal expenses on circuit to Canton, March 4 to 29, 1910, Mexican four hundred and seventy-eight and 97/100 (\$478.97) dollars, account for which is appended hereto. For the items in the account which have no voucher it was impracticable to obtain vouchers.

(Signed) RUFUS H. THAYER.
Judge of the United States Court for China.

[Exhibit No. 1, page 133.]

TREASURY DEPARTMENT,
OFFICE OF ASSISTANT SECRETARY,
Washington, April 11, 1913.

Mr. GEORGE F. CURTIS,
Washington, D. C.

SIR: In compliance with the request contained in letter of Honorable William Hughes, dated the 9th instant, I beg to transmit herewith certified copies of certain accounts and documents relating to the consular and United States court in China. These papers have been sent in accordance with an itemized list prepared by you which was forwarded to this department by the Senator.

Respectfully,

JNO. SKELTON WILLIAMS,
Assistant Secretary.

[Exhibit No. 1, page 134.]

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR STATE AND OTHER DEPARTMENTS,
Washington.

GEORGE F. CURTIS, Esquire,
545 Florida Avenue NW., Washington.

SIR: I have to enclose herewith copies of the accounts and documents duly certified, which you asked for in your letter of March 29, 1913, as follows:

(1) Aggregate expenses as summarized by you of the United States Court for China for the fiscal years ending June 30th, 1907, 1908, 1909, 1910, 1911, and 1912.

The certificates for 1907 and 1908 did not give the summaries for those fiscal years; but the aggregate expenses for those years were as follows: Fiscal year 1907, \$15,151.35, and 1908, \$28,367.69.

(2) Receipt of Judge Thayer for salary for months of May, June, July, August, September, and October, 1909, 1910, 1911, and 1912.

No receipts of Judge Thayer for the months of May, June, July, and August, 1911. He drew drafts on the Secretary of State for his salary for those months.

(3) Receipt for rent for United States Court for China at Shanghai for the quarters of the years 1911 and 1912 (fiscal years).

(4) Tax receipts for rent for above quarters.

No tax receipts appear with the accounts for the fiscal year ending June 30, 1911.

(5) Account of fees by Marshal O'Brien during his term of office as marshal of said court.

[Exhibit No. 1, page 135.]

(6) Account of fees made by Marshal Wilson during his term of office.

(7) Account of fees, costs, made by F. E. Hinckley during his term of office as clerk of said court.

(8) Account of fees made by Mr. Davies during his term of office as clerk of said court.

(9) Letter of Clerk of Court Hinckley, dated September 19, 1910, *in re* estate, W. Blanchard, with any other documents in said estate, transmitting tael 45,000.00 and additional transmissions to Treasury Department.

(10) Similar papers in the case of the Estate of Corsette Denvers—Letter dated November 24th, 1908.

(11) Letter of (A. O. Latham) auditor's office initialed A. O. L., to F. E. Hinckley, asking that he make his return of fees as clerk of court.

(12) Letter of Auditor to State Department, after failure to get return of accounts from said Hinckley, asking State Department to instruct said Hinckley to make said return of accounts of fees as clerk.

(13) Letter of auditor's office (initialed A. O. L.) addressed to Judge Thayer, asking him to explain why he charged the Government for his hotel expenses for one week in the British Colony of Hongkong, where he had no jurisdiction while the district attorney and stenographer of court had returned to Shanghai.

This letter was addressed to Mr. Hinckley, special disbursing officer.

(14) Judge Thayer's explanation dated October 15th, 1910, *in re* above charge for hotel expenses.

(15) In response to this number, I have to state that the only returns of balances of estates received at this office from the United States Court for China were those of the estate of W. Blanchard and of Corsette Denvers, referred to above under Nos. 9 and 10.

There have been no returns of balances received at this office from the United States Consulate General at Shanghai since 1906, nor of estates finally settled.

I also furnish herewith copies of the bill and receipts of Judge Thayer requested by

[Exhibit No. 1, page 136.]

you over the telephone on the 9th instant.

Respectfully,

Enclosures as above.

Auditor.

[Exhibit No. 2, page 1.]

No. 473.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from the files and records of this department.

In testimony whereof I, W. J. Bryan, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the chief clerk of the said department, at the city of Washington, this 28th day of April, 1913.

[SEAL.]

W. J. BRYAN,
Secretary of State,
 By WM. McNEIR,
Chief Clerk.

[Exhibit No. 2, page 2.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, February 7, 1911.

Honorable PHILANDER C. KNOX,
Secretary of State.

SIR: I have the honor to advise the department that I am contemplating spending my vacation this summer in America, but had not anticipated leaving here before possibly the middle of June. Owing to protracted illness of Mrs. Thayer and the necessity of her leaving China at the earliest possible date, under the advice of physicians, I am hoping to be able to arrange the business of the court so that I may possibly leave for America about the middle of April. So far as I can see now, I think that it will be possible for me to do so at that time without embarrassment to the business of the court. I shall contemplate returning to Shanghai so as to be ready to resume my work at the opening of the next term of court on the first Monday in October next.

I have deemed it my duty to advise the department of my purpose in this regard to enable the President or the Secretary to communicate with me upon this subject if any communication may be thought necessary.

I have the honor to be, sir, your obedient servant,

RUFUS H. THAYER.

[Exhibit No. 2, page 3.]

No. —

DEPARTMENT OF STATE,
Washington, March 14, 1911.

The Honorable RUFUS H. THAYER,
Judge United States Court for China,
Shanghai, China.

SIR: The department has received your communication of the 7th ultimo, saying that in view of the protracted illness of Mrs. Thayer you will leave for the United States about the middle of April on your vacation, and that you contemplate returning to Shanghai in order to resume work at the opening of the next term of court on the first Monday in October next.

The department knows of no objection to your leaving Shanghai at the time mentioned.

I am, sir, your obedient servant,
 For Mr. Knox:

WILBUR J. CARR.

172.3/26

[Exhibit No. 2, page 4.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, April 10, 1912.

No. 718.

Honorable PHILANDER C. KNOX, *Secretary of State,*
Washington.

DEAR MR. SECRETARY: I beg to advise you that I am leaving Shanghai the latter part of May for London, England, to meet Mrs. Thayer.

Mrs. Thayer was taken seriously ill here in October, 1910, and was continuously ill all the following winter. In April, 1911, acting under advice of physicians, I took her home, but her recovery was very slow and she was wholly unable to return with me when I started back to China in early September. Since that time she has been continuously in care of skillful physicians who are much concerned about her present condition although believing that she will recover full health by the early autumn.

She leaves for England late in May and I feel compelled to join her there, hoping that she will be able a little later to return with me to China. It is only this distressing fact that could induce me to leave my post this summer, being myself in vigorous health and having no need or inclination for any extended vacation. The circumstances being as recited, I feel that I must meet Mrs. Thayer in England and that I should advise the President and yourself of my proposed absence and its cause.

[Exhibit No. 2, page 5.]

I may say that my absence will substantially coincide with the summer months when there is little if any business before the court and that thus litigants will suffer the minimum amount of inconvenience.

I shall leave with a clean docket after an unusually busy term. As the distance between Shanghai and London by the Siberian route is now covered in fourteen days, it is possible to get back without extraordinary consumption of time in case any emergent condition arises.

I am stopping at Harbin for a short term of court on my way north and shall open the October term in Tientsin upon my way back.

For the information of the department, I beg to say that my London address will care of Brown, Shipley and Company, 123 Pall Mall.

I have the honor to be,

Very respectfully, your obedient servant,

RUFUS H. THAYER.

[Exhibit No. 2, page 6.]

DEPARTMENT OF STATE,
Washington, May 31, 1912.

The honorable RUFUS H. THAYER,

Judge of the United States Court for China, Shanghai, China.

SIR: The department has received your despatch number 718 of the 10th ultimo, reporting your intended departure from Shanghai during the latter part of May. The information contained therein has been carefully noted.

I am, sir, your obedient servant,

For Mr. Knox:

WILBUR J. CARR.

172.3'51

[Exhibit No. 2, page 7.]

Articles of agreement made and entered into this eighteenth day of May, one thousand nine hundred and eleven, between the China Realty Company (Limited), of Shanghai, in the Empire of China, and who and whose successors and assigns are hereinafter styled the Lessors of the one part and Amos Parker Wilder, consul general for the United States of America at Shanghai, aforesaid, an American citizen, and who and whose executors, administrators, and assigns and successors are hereinafter styled the Lessee of the other part:

Witness that the Lessors agree to let and the said Lessee agrees to rent the five houses and premises Nos. 12 to 16, inclusive, Whangpoo Road, on the Clifton estate, for the term of three years commencing on the first day of August, 1911, and terminating at noon on the thirty-first day of July, 1914, at the annual rental of Shanghai taels eight thousand and four hundred, payable by equal quarterly payments, in approved bank notes in Shanghai taels, to the Lessors during the continuance of this term and the first payment for two months amounting to taels 1,400 of the said rent to be made on the thirtieth day of September next and subsequent equal quarterly payments to be made on the thirty-first day of December, the thirty-first day of March, the thirtieth day of June and the thirtieth day of September in every year.

The Lessors agree to execute, and do at their own expense, subject to a contribution from the Lessee as hereinafter mentioned, the alterations and works specified in the schedules and plans hereto, and such alterations and works shall be completed before the thirty-first day of July, 1911, and the Lessee agrees to pay the sum of Shanghai taels two thousand and five hundred as a fixed contribution towards the cost of gaol work, when and after such gaol work shall have been completed in accordance with the approved plans and specifications, it being agreed that the iron cages for the prisoners and all other special interior fixtures and fittings for the gaol shall at all times be the property of the United States Government and may be removed by the Lessee without notice to the Lessors and

[Exhibit No. 2, page 8.]

further the same shall be removed by the Lessee at the expiration or sooner determination of the said term at his own expense and all damage done by such removal shall be made good by the Lessee. And it is hereby further agreed that the Lessee will, during the said term, pay unto the Lessors the said rent hereinbefore mentioned and will also pay and discharge all taxes, rates, and assessments whatsoever now or hereafter to become payable in respect of the said premises, Chinese Government ground rent and municipal land tax alone excepted, and will at all times during the said term manage the said premises and act in reference thereto in all respects in accordance with the municipal regulations now in force or which may hereafter be enacted for the regulation of the foreign settlements or concession at Shanghai, as the case may be, where the said premises are situate. That the Lessee shall not assign or underlet the said premises or any part thereof or let the whole or any part of the said premises except to the United States Department or Federal officials or to members of the respective staffs without the previous consent in writing of the Lessors, and that the Lessee shall not make any alteration in the external appearance of the said building or pull down, alter, or remove any portion of the internal arrangements or erect any additional building without submitting the proposed scheme for the approval of and obtaining a written license from the Lessors to make such alteration or additions, or use the said premises for any other purpose than that of a consulate, with post office, jail, judicial, and other offices in connection therewith, or for occupancy by members of the respective staffs, without the consent in writing of the Lessors. And it is further agreed that (the said premises being put in a good state of repair at the beginning of the term) all repairs, or decorations that may at any time during the term of this lease become necessary to the inside of the said premises, shall be done by and at the ex-

[Exhibit No. 2, page 9.]

pense of the Lessee, but repairs to the main walls or the essential fabric of the house and all repairs to the external walls and roof shall be executed by and at the expense of the said Lessors, but it shall not be obligatory on the said Lessors to execute any such repairs unless and until all rent due in respect of the said premises shall have been duly paid by the Lessee in accordance with the Agreement on the part of the Lessee hereinbefore contained. Should, however, the main wall or walls or roof become destroyed by fire, riot, lightning, or tempest, then it is optional with the Lessors whether they shall rebuild the same, and should they decide not to rebuild or repair the damage so occasioned, then, in that case, the rent hereby reserved shall cease from the end of the month in which such above-mentioned catastrophe shall have happened, and the tenancy hereby created shall then terminate and be at an end, but should they decide to rebuild the premises it shall be done by and at the expense of the Lessors, and in that case, save as aforesaid, no rent shall be charged for the term during which the said premises are in course of reconstruction and unfit occupation. And it is hereby further agreed, that all sinks of whatsoever nature or kind shall be provided by the Lessee and maintained at the Lessee's sole cost and expense. And it is hereby further agreed that the Lessee shall keep all the glass in the windows and all hinges, bolts, cabin hooks and fastenings to doors, windows, venetians and shutters, locks, water-service taps, bell and lighting installations, and other internal or external fixtures upon and belonging to the premises and house drains, gullies, down pipes, and bath discharges in good and sufficient repair, and all chimneys properly swept and cleaned during the tenancy, and in the same good and sufficient repair to deliver up at the end thereof (reasonable wear and tear and damage by fire, riot, lightning, or tempest alone excepted). And it is hereby further agreed that should the Lessee alter, renew, repair, add to, or otherwise deal with any of the internal or external fixtures of

[Exhibit No. 2, page 10.]

the said premises all such alterations, renewals, repairs, and additions shall forthwith be and become the property of the Lessors and the Lessee shall not be entitled to remove or dispose of the same or any part thereof at the expiration or sooner determination of the term hereby granted or at any other time whatsoever. And it is hereby further agreed that the Lessee shall not commit or suffer to be committed any waste, spoil, or destruction upon the said premises or any part thereof or do or suffer to be done therein or thereon any act, matter, or thing which shall or may be or grow to the grievance, disturbance, damage, or annoyance of the Lessors or any of the neighbouring tenants. And it is hereby further agreed that the Lessee will not carry on or suffer to be carried on any dangerous or hazardous trade on the said premises, or store or suffer to be stored in or upon the said premises any combustibles or other hazardous articles and shall not use or suffer the premises to be used for any purpose whereby the insurance of the said premises against fire may be increased or invalidated, but such restriction shall not preclude the Lessee from storing such ammunition for small arms as is kept by the consular officers for the purpose of defence, or such kerosene oil in small quantities as may be necessary for heating purposes, or gasoline for motor purposes, as allowed by the Shanghai Fire Insurance Association. And it is hereby further agreed that the Lessee will not store or suffer to be stored on the said premises any goods, cargo, or other articles that the Lessors may object to or anything which may be of such weight as to cause a dangerous strain on the floor or fabric of the said premises. And it is hereby further agreed that the Lessee will not hold or allow to be held any auction on the premises hereinbefore demised without the written consent of the Lessors, but such consent shall not be unreasonably withheld provided all claims for rent have been previously satisfied and paid and the Lessee has handed in a written undertaking that the auctioneers will make good

[Exhibit No. 2, page 11.]

all damage done to the premises by the removal of the goods and tenants' fittings and that the bell and lighting installation and water service will be left intact, together with all the keys of the buildings and fixtures belonging to the Lessors prior to the termination of this lease. Provided always that nothing herein contained shall relieve the Lessee from the responsibility in this behalf assumed by him under the preceding clauses hereof. And it is hereby further agreed that at the expiration or sooner determination of the term hereby granted the Lessee shall and will peaceably and quietly leave, surrender, and yield up unto the Lessors the premises hereby agreed to be let, and all parts and appurtenances thereof, and fixtures, fastenings, matters, and things thereto in any wise belonging or appertaining save as aforesaid in as good and proper condition as when entered into at the commencement of the agreement, unless prevented by fire or other inevitable accident and ordinary wear and tear excepted. And it is hereby agreed that at or before the expiration or sooner determination of the term hereby granted the Lessee shall remove or cause to be removed all gas meters, gas stoves, and all other things whatsoever from the said premises which are upon the said premises and are not the property of the Lessors and the Lessee, and all other person or persons whatsoever shall after the expiration or sooner determination of the term hereby granted be debarred from entering upon the said premises by themselves, their agents, or servants, for the purpose of taking away, inspecting, or otherwise dealing with any such things whatsoever as have not been removed from the said premises before or at the expiration or sooner determination of the term hereby granted. And it is hereby further agreed that the Lessors and their lawfully accredited agents, architects, surveyors, or workmen may, at all reasonable times enter upon the said premises to inspect the same or to make any repairs, renewals, or necessary alterations that the Lessors may think fit. And it is hereby further agreed that the Lessee will surrender and de-

[Exhibit No. 2, page 12.]

liver up during business hours to the Lessors at their offices, at 24A Kiangse Road, Shanghai, all the keys of the premises hereinbefore demised at or before noon on last day of the term for which the premises hereinbefore mentioned are demised. And it is hereby further agreed that if the rent hereinbefore reserved shall be in arrears or unpaid for the space of seven days next after the same shall have become due, whether the same shall have been legally demanded or not, or in case of the breach, nonobservance, or nonperformance of any or either of the stipulations or agreements on the part of the Lessee hereinbefore contained, it shall be lawful for the Lessors or their agents upon the said premises hereby agreed to be let or any part thereof in the name of the whole peaceably and quietly to reenter, and the same to have again, retain, repossess, and enjoy as if this agreement had never been made, and all other tenants and occupiers to expel, put out, and remove, anything herein contained to the contrary notwithstanding, provided always the power of reentry hereinbefore given shall not be construed to prevent or hinder the Lessors from receiving or enforcing payment of the said rent by any means whereby the same is lawfully recoverable or from recovering at law any damage accruing by reason of the breach, nonobservance, or nonperformance of any of the conditions or stipulations herein contained. And it is hereby further agreed by the Lessee that he, the Lessee, will at all times during the continuance of this agreement keep the said premises in a sanitary state and condition. And that the Lessee shall be entitled to break ground or pavements at any suitable spot on the premises for the purpose of erecting a flagstaff. And it is hereby further agreed that at the expiration of this lease on 31st July, 1914, the Lessee shall have the option to extend the lease for a further term of two years, namely, to 31st July, 1916, upon the same terms and conditions as the present lease, with the exception that there will be no option for extension. And it is hereby further agreed that during the con-

[Exhibit No. 2, page 13.]

tinuance of this lease the United States Government shall have the first option to purchase the property covered by this lease as well as the other buildings on the same estate now numbered and known as Nos. 11, 17, 18, and 19 Whangpoo Road, together with any land shengkoed in front of B. C. lot 1727, such option to include land and improvements and subject to any lease now or hereafter existing.

Signed by the aforesaid Lessors, China Realty Company (Limited).

(Sgd.) CHINA REALTY COMPANY (Ltd.),
F. J. RAVEN,
Managing Director.

In the presence of—

(Sgd.) JAMES B. DAVIES.
(Sgd.) HAROLD M. HYKES.

Signed by the aforesaid Lessee, Amos Parker Wilder, consul general for the United States of America.

(Sgd) AMOS P. WILDER.

In the presence of—

(Sgd.) JAMES B. DAVIES.
(Sgd.) HAROLD M. HYKES.

[Exhibit No. 2, page 14.]

M-4289.

UNITED STATES POSTAL AGENCY,
Shanghai, China, May 16, 1911.

AMOS P. WILDER, Esquire,
American Consul General, Shanghai, China.

SIR: I have the honor to state that in consideration of your signing a lease for the premises Nos. 12 to 16 Whangpoo Road, Shanghai, China, at an annual rental of Shanghai taels eight thousand four hundred (\$8,400) and in further consideration of your giving occupation to the United States postal agency of No. 16 and part of the ground floor of No. 15 during the continuance of that lease I undertake and agree on behalf of the United States postal agency at Shanghai to contribute to such annual rental at the rate of six hundred dollars, United States currency; and I further undertake and agree to pay water rates and all taxes on the quarters occupied by the postal agency, except the Chinese Government ground rent and the Shanghai municipal land tax, which are to be borne by the lessors under the said lease for Nos. 12 to 16 Whangpoo Road, but the United States postal agency shall not be responsible for the general municipal rate on an assessment of rental value in excess of Shanghai taels one hundred per month. And I further undertake and agree to make all interior repairs that may become necessary in the said premises of the United States postal agency after said premises have been altered and placed in thorough repair under the lease with the China Realty Co., of May 18th, 1911, in accordance

[Exhibit No. 2, page 15.]

with plans and specifications approved by me.

This agreement is to run from date hereof, contribution to rent as fixed herein to begin on August 1, 1911, and the entire agreement to remain and continue in force throughout the term for which the lease for Nos. 12 to 16 is made as well as the further two years under option contained therein if such option is exercised; and this agreement is and shall be subject to all the terms and conditions contained in said lease, a copy of which is to be supplied to the United States Postal Agency.

I have the honor to be, sir,
Your obedient servant,

(Sd.) JOHN M. DARRAH,
Postal Agent.

[Exhibit No. 2, page 16.]

Misc. No. 1434.

SHANGHAI, May 18, 1911.

J. M. DARRAH, Esquire,
United States Postal Agent, Shanghai.

SIR: Your letter of May 16, 1911, has been received in which are embodied your undertakings and agreements with regard to the signing by me of a lease for the premises Nos. 12 to 16 Whangpoo Road, inclusive.

In consideration of those undertakings and agreements, which I hereby accept, I have to-day signed the lease for the above premises for a term of three years from August 1st, 1911, with option of extension for a further two years, and I hereby undertake and agree to give occupancy of house No. 16 and part of the ground floor of house No. 15 to the United States Postal Agency during the continuance of said lease upon the terms and conditions expressed in your letter and subject to all the terms and conditions of said lease, a copy of which is supplied herewith.

I am, sir, your obedient servant,

(Sd.) AMOS P. WILDER.

Enclosure: Copy of lease.

[Exhibit No. 2, page 17.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, May 13, 1911.

AMOS P. WILDER, Esquire,
*American Consul General,
 Shanghai, China.*

SIR: I have the honor to say that in consideration of your signing a lease for the premises on the Clifton estate Nos. 12, 13, 14, 15, and 16 Whangpoo Road at an annual rental of Shanghai taels eight thousand four hundred (tls. 8,400.00) and in further consideration of your giving occupation to the United States court for China of house No. 12 during the continuance of that lease, I undertake and agree on behalf of the United States court for China to contribute to such annual rental at the rate of twenty four hundred dollars United States currency.

It is further understood that the obligation of the United States court for China for rent under said lease shall not exceed in any fiscal year the amount of the appropriation made by the Department of State to the United States court for China for that purpose.

It is further understood and agreed that should the State Department after August 1, 1911, appropriate any additional money to the consulate, jail, or any department other than the court that can be applied to the total annual rental (tls. 8,400 00) that there will be a readjustment of proportions of rent now borne by the several departments reducing the amount of rent agreed herein to be paid for the use of No. 12 Whangpoo Road by the United States court for China.

[Exhibit No. 2, page 18.]

I further undertake and agree to pay water rates and all taxes on said No. 12 Whangpoo Road except the Chinese Government ground rent and the Shanghai municipal land tax, which are to be borne by the lessors under the said lease. The United States court for China shall not be responsible for the general municipal rate on an assessment of rental value in excess of Shanghai taels two hundred per month.

I hereby further undertake and agree to make all interior repairs that may become necessary in the said No. 12 after said premises have been altered and placed in thorough repair under the lease with the China Realty Company of May 18, 1911, in accordance with plans and specifications approved by me. This agreement is to run from date hereof contributing to rent as fixed herein to begin on August 1, 1911, and this agreement is to remain and continue in force throughout the term for which the said lease is made as well as the further two years contained in said lease if it is decided to exercise such option, and this agreement is and shall be subject to all terms and conditions in said lease, copy of which is to be supplied me.

I have the honor to be, sir,
 Your obedient servant,

(Sd) D. A. WILSON, JR.,
Marshal and Disbursing Officer.

[Exhibit No. 2, page 19.]

Miscl. No. 1433.

SHANGHAI, May 18, 1911.

D. A. WILSON, JR.,
Marshal and Disbursing Officer, United States Court for China, Shanghai.

SIR: Your letter of May 13, 1911, has been received in which are embodied your undertakings and agreements with regard to the signing by me of a lease for the premises Nos. 12 to 16 Whangpoo Road, inclusive.

In consideration of those undertakings and agreements, which I hereby accept, I have to-day signed the lease for the above premises for a term of three years from August 1, 1911, with option of extension for a further two years, and I hereby undertake and agree to give occupancy of house No. 12 to the United States court for China during the continuance of said lease upon the terms and conditions expressed in your letter and subject to all the terms and conditions of said lease, a copy of which is supplied herewith.

I am, sir, your obedient servant,

(Sd) AMOS P. WILDER.

Enclosure: Copy of lease.

[Exhibit No. 2, page 20.]

Copy O.
Compared with No. 614.

AMERICAN CONSULATE GENERAL,
Shanghai, China, February 20, 1913.

The honorable the SECRETARY OF STATE,
Washington.

SIR: I have the honor to acknowledge the receipt of the department's instruction No. 290 of December 28, 1912, and to state that the excess in the charge for rent in the contingent expense account of this office for the quarter ended September 30, 1912, is explained by reference to my despatch No. 311 of June 10, 1911. In that despatch I set forth the arrangement by which the rent of the present consular buildings was to be met jointly by the consulate, the United States court, the jail, and the postal agency. The rent is payable in Shanghai taels each quarter and under the arrangement with the court, jail, and postal agency, the consulate pays as its share that portion left over after the former's fixed gold payments have been subtracted from the total. This portion has grown with the drop in the silver exchange value of gold, as is shown by the following amount of rent paid by this consulate general since September 30, 1911:

September 30, 1911.....	Rent \$167. 74
December 31, 1911.....	\$155. 40
March 31, 1912.....	\$207. 90
June 30, 1912.....	\$279. 30
September 30, 1912.....	\$340. 20
December 31, 1912.....	\$309. 60

The rent for this present quarter will be \$403.20, and

[Exhibit No. 2, page 21.]

is arrived at as follows:

Total rent for premises occupied by consulate, U. S. court, jail, and postal agency for quarter ended—

March 31, 1913	Shanghai T2, 100. 00	
At Government rate of .692 equals gold	\$1, 453. 20	
Of this sum the court pays.....	\$600. 00	
the jail pays.....	300. 00	
postal agency.....	150. 00	
	1, 050. 00	1, 050. 00
Leaving a balance of.....		403. 20

To be paid by the consulate general.

I have the honor to be, sir,
Your obedient servant,

AMOS P. WILDER, Consul General.

File No. 125.4.

[Exhibit No. 2, page 22.]

No. 391.

AMERICAN CONSULATE GENERAL,
*Shanghai, China, December 22, 1911.*The honorable the SECRETARY OF STATE,
Washington.

SIR: I have the honor to refer again to the consular quarters at this port.

These premises were occupied on August 1, 1911, and, repairs and alterations having now been completed and rooms finally assigned for the various offices, &c., I now have the honor to submit the report called for by paragraph 66 of the Consular Regulations. Much of the information required thereunder has been set out in my despatch No. 311 of June 10, 1911, but is reiterated here in order that all particulars may be conveniently grouped in one communication.

The offices of the consulate general are located at 13 and 14 Whangpoo Road.

The total amount of rental in the lease which I have signed for the five houses, 12-16 Whangpoo Road (copy herewith), is taels 8,400 per annum, or, at say 60, about \$5,040 United States currency, per annum, of which

	U. S. Currency.
The court will pay the equivalent of.....	\$2, 400
The jail will pay the equivalent of.....	1, 200
The postal agency will pay the equivalent of.....	600

The balance of taels must be borne by the allowance to the consulate general. This balance will vary according to exchange and, at say 60, will equal about \$840 United States currency.

[Exhibit No. 2, page 23.]

My private residence is not in the same buildings or owned by the same landlord, and I do not propose to occupy as a residence or for my private purposes any part of the rooms paid for out of the rent allowance.

As set out above, two buildings, 13 and 14 Whangpoo Road, are used for consular purposes. No. 13 consists of three floors and an attic. The ground floor has four rooms facing the river. These are low and damp and not suitable for public offices. Two of these rooms are given over to the Compradore and Chinese staff, the remaining two being utilized for commercial and other files. This floor has also a store-room and lavatories for the Chinese office staff and one for coolies.

The second floor, which is reached by an easy flight of stairs, has a hall and three good rooms. These are used as land office, shipping or general office, and senior vice consul's office, respectively, the latter filling a long felt want, as privacy is constantly demanded by this officer both for conferences and despatch work. All three of these rooms face the river and are well lighted and ventilated. This floor has lavatory for the foreign male staff.

The third floor has a hall, three large rooms, and a small one. The room at the southwest corner is the consul general's office, adjoining which is a waiting room, much appreciated by the public, as formerly those who waited their turn to see the consul general were compelled to do so in an open, cold hallway, whether official or civilian, and much adverse criticism on this score was called forth in the old premises.

Next

[Exhibit No. 2, page 24.]

to the waiting room is a small one with filing cabinets and used as an annex to the large correspondence room adjoining. These rooms all face the river and are equally as well lighted and ventilated as those on the floor below. This floor has a private lavatory for the consul general and one for the female stenographers.

The attic is composed of low-pitched, slant-roof rooms, unsuitable for office purposes. Mr. Hanson has sleeping quarters there at present.

The enclosed plan of No. 13 shows the arrangement of the rooms and their dimensions.

No. 14, which communicates with No. 13 by a door on the second floor, has no rooms on the ground floor serviceable for any but storage purposes.

The second floor has two large and one small room, all employed for office purposes. The largest, which looks into Whangpoo Road, is used as the Consular Court room and senior assessor's office. The next, which adjoins and looks on to the grounds of the Japanese consulate general, is the office of the assistant assessor.

The smaller room, also looking into Whangpoo Road and adjoining the consular court, is the office of the marshal of that court, who is also jailer. There is in addition a very small room on this floor used by Chinese.

The three rooms on the floor above are occupied at present by the senior assessor as living quarters.

A plan of the first and second floors of No. 14 is also enclosed, showing arrangement and dimensions of rooms therein.

The consulate is now housed in a manner more in keeping with the importance of our country, and it is pleasant to be no longer made the jest of the community because of in-

[Exhibit No. 2, page 25.]

ferior lodgment. The buildings present a creditable exterior appearance and the arrangement and cheerfulness of the offices is favorably commented on by all. Myself and staff feel the difference in working in rooms where there is sunlight and pure air, while ventilated sanitary lavatories, which were unknown at the old quarters, add to the healthful surroundings.

The location on the river is conspicuous, our flag is visible along the entire water front, and the American consulate general is to-day a landmark, whereas in the past it was unseen and lost behind unsightly godowns, that emitted unhealthy odors whenever their doors were opened.

The American community is gratified at the improvement, but they, realizing that the lease is but a short one, hope that the Government will take steps to acquire a permanent home that will be a lasting credit to our country in China. As before pointed out, the present site has long been regarded as the one best adapted to our use.

* * * * *

I have the honor to be, sir,
Your obedient servant,

AMOS P. WILDER,
Consul General.

Enclosures:

Copy lease.
Plan No. 13.
Plan No. 14.
Photograph No. 1, in duplicate.
Photograph No. 2, in duplicate.
Copy agreement with U. S. court.
Copy agreement with U. S. postal agency.

[Exhibit No. 2, page 26.]

Copied by AC.
Compared with O.
No. 452.

AMERICAN CONSULATE GENERAL,
Shanghai, China, March 16, 1912.

The honorable the SECRETARY OF STATE,
Washington.

SIR: I have the honor to acknowledge receipt of the department's instruction No. 228, of February 7, 1912, calling for a report as to what amounts should be paid by Mr. Hadley and Mr. Hanson for the quarters now occupied by them in the consular premises.

During the first two quarters of the current fiscal year rent paid out of consular contingents for Nos. 13 and 14 Whangpoo Road averaged \$161.57 per quarter, or, say, \$650 U. S. currency, per annum. Of this amount two-thirds, or \$433.33, can properly be taken as rental for No. 13 and one-third, or \$216.67, for No. 14. Mr. Hadley's quarters represent probably one-third of the rental value of No. 14, or \$72.23, say \$75, per annum.

The rooms occupied by Mr. Hanson are in an attic, of little use as working office rooms, and represent but a small portion of the rental value of No. 13. In my opinion \$40 per annum would be a fair proportion to be collected for those rooms.

I have the honor to be, sir,
Your obedient servant,

W. RODERICK DORSEY,
Vice Consul General in Charge.

[Exhibit No. 2, page 27.]

DEPARTMENT OF STATE,
Washington, April 26, 1913.

Mr. GEORGE F. CURTIS,
Washington, D. C.

SIR: Referring to your call at the department and your request, endorsed by the Honorable William Hughes, for certain information in regard to the United States Court for China and the American consulate general and consular court at Shanghai, I enclose copies of such of the papers desired as are available. The various points mentioned in the unsigned letter which you left at the department are referred to below in the order mentioned.

I. Leave of Judge Rufus H. Thayer.

February 7, 1911, Judge Thayer reported to the department that he had expected to leave China on vacation about the middle of June of that year, but on account of the protracted illness of Mrs. Thayer it might be necessary to leave about the middle of April, and that he contemplated returning to Shanghai so as to be ready for the next term of court, the

[Exhibit No. 2, page 28.]

first Monday in October. He did not ask for leave and the department, having doubts as to its jurisdiction over the movements of a judge of a United States court, merely acknowledged his letter with the statement that "the department knows of no objection to your leaving Shanghai at the time mentioned."

The records do not show the period during which he was actually absent from Shanghai.

April 10, 1912, Judge Thayer wrote again, "I beg to advise you that I am leaving Shanghai the latter part of May for London, England, to meet Mrs. Thayer" who "was taken seriously ill in October, 1910, and was continuously ill all of the following winter." She had been unable to return to Shanghai when the judge returned. He added, "It is only this distressing fact that could induce me to leave my post this summer, being myself in vigorous health and having no need or inclination for any extended vacation. The circumstances being as recited, I feel that I must meet Mrs. Thayer in England and that I should advise the President and yourself of my proposed absence and its cause.

"I may say that my absence will substantially coincide with the summer months, when there is little if any business before the court, and that thus litigants will suffer the minimum amount of inconvenience.

"I shall leave with a clean docket after an un-

[Exhibit No. 2, page 29.]

usually busy term. As the distance between Shanghai and London by the Siberian route is now covered in fourteen days, it is possible to get back without extraordinary consumption of time in case any emergent condition arises.

"I am stopping at Harbin for a short term of court on my way north and shall open the October term in Tientsin upon my way back."

The department, on May 31, 1912, acknowledged receipt of this dispatch and added "The information contained therein has been carefully noted."

The Judge has, of course, been absent from Shanghai at other times on circuit.

Copies of Judge Thayer's two letters and the department's replies are appended.

II. Inventories of the estates administered by the consular court at Shanghai.

The consulate-general has reported deaths and the disposition of effects, showing whether the estates were administered in the United States court or the consular court and where (book and page) in the records of the office full information regarding the deaths, inventories, et cetera, is to be found. Inventories of such estates are not on file in the department. The act of June 30, 1906, requires that the consular officers shall file sworn inventories within sixty days after

[Exhibit No. 2, page 30.]

death, with the clerk of the United States court for China.

The judge of the consular court makes a semiannual report as to the nature of the estates being administered in that court. An annual return of the consular court fees, fines, expenses, and balances, as well as quarterly returns of marshals, are also rendered regularly to the department.

III. Probate jurisdiction of the United States court for China.

The act of June 30, 1906, establishing the United States court for China, gave that court "supervisory control over the discharge by consuls and vice consuls, of the duties prescribed by the laws of the United States relating to the estates of decedents in China" and required consular officers to file with the United States court, inventories of effects, deaths, et cetera, of decedents. The act provides further that consular officers "shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls

[Exhibit No. 2, page 31.]

in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require, where it may be necessary, a special bond for the faithful performance of his duty, to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof."

In May, 1907, a case in re probate of will of John Pratt Roberts came up in the United States Court for China and regarding the probate jurisdiction of the United States Court that court held as follows: "We hold, therefore, that prior to the inauguration of this court the consular court of the United States in China had jurisdiction in the matter of the estates of Americans decedent in China, in all cases, and that now this court has jurisdiction in such matters when the value of the estate involved is above \$500 United States currency, the consular courts retaining their jurisdiction

[Exhibit No. 2, p. 32.]

over those estates which are valued at less than this amount." A copy of this decision is appended.

IV. Designation of F. W. Hadley as judge of the consular court.

In the diplomatic and consular act approved March 2, 1909, Congress provided that the judicial authority vested in the consul general at Shanghai should devolve upon a vice consul general to be designated from time to time by the Secretary of State, and the senior vice consul general at Shanghai was designated as being the best man available at the time. In August, 1909, he went on leave without the department's advance authorization, and in the emergency thus created his assistant, Mr. Hadley, was designated as judge of the court.

V. Qualifications of F. E. Hinckley for district attorney.

It is pertinent to note first that the district attorney of the United States court for China, as well as the judge, marshal, and clerk, is appointed by the President, by and with the advice and consent of the Senate, and that on December 10, 1910 (presumably at the time that Mr. Hinckley's nomination was before the Senate), the chairman of the Committee on the Judiciary, at the request of that committee, was furnished with the data on file in the department regarding Mr. Hinckley, among which was his original application, letters of endorsement, et cetera. Among the papers is a letter from one of Mr. Hinckley's professors, stating

[Exhibit No. 2, page 33.]

that Mr. Hinckley has "taken the greater part of the work that is required for the degree of bachelor of laws" and has made a specialty of foreign jurisdiction in Eastern countries.

There is also a letter from Judge Thayer stating that "although Dr. Hinckley has not had very considerable experience in the active practice of his profession, his special studies and his active cooperation with both my predecessor and myself and with Mr. Bassett have given such practical experience as in my judgment to make him clearly eligible under section 6 of the act (June 30, 1906), creating the court which requires that the district attorney shall be a lawyer 'of good standing and experience.'"

VI. Lease of consular, court, and other Government premises in Shanghai.

The consul general at Shanghai signed a lease for the five adjoining houses, known as the Clifton estate, numbers 12, 13, 14, 15, and 16, Whangpoo Road, the full rental to be 8,400 Shanghai taels (\$5,812 gold). House No. 12, a large corner house, is subleased by the consulate general in writing to the United States Court, for \$2,400 per annum, the amount appropriated by Congress for this purpose. In this lease it is stated "It is further understood and agreed that should the State Department, after August 1, 1911, appropriate any addi-

[Exhibit No. 2, page 34.]

tional money to the consulate or any department other than the court that can be applied to the total annual rental (taels 8,400), that there will be a rearrangement of proportions of rent now borne by the several departments, reducing the amount of rent agreed herein to be paid for the use of No. 12 Whargpoo Road by the United States court for China."

The consulate general also subleases in writing house No. 16 and part of the ground floor of No. 15 to the United States postal agency for \$600, which amount is paid by the Post Office Department.

The consular jail occupies No. 15, for which \$1,200 per annum is appropriated by Congress.

The remainder of the total rent, with the exception of \$115 paid for four rooms subleased to consular employees, is paid from consular contingent allotment for the portion occupied by the consulate general.

The entire rent is paid as follows:

Rent, 8,400 taels, at Government rate for March quarter, 1913,		
\$.692, equal to about.....	\$5, 812	
U. S. court for China.....	gold..	\$2, 400
Jail.....	do....	1, 200
Postal agency.....	do....	600
Quarters on third floor of No. 14 and attic of No. 15, rented by		
two consular employees.....	do....	115
Consulate general (approximately).....	do....	1, 497
		<hr/>
Totals.....	\$5, 812 do....	5, 812

[Exhibit No. 2, page 35.]

The amount paid by the consulate general is the difference between \$4,314 gold, paid by the sublessees, and the current equivalent in gold at the time of payment, of the total rental of 8,400 taels, and necessarily fluctuates, so that it may be more or less than \$1,497, according to the rate of exchange.

Copies of the lease and subleases to the United States Court and Postal Agency are appended.

VII. Residential occupation of Government buildings at Shanghai.

One interpreter, an American, promoted from the student corps, at a compensation of \$1,500 per annum, occupies an attic room in No. 13 as sleeping quarters, for which he pays \$40 gold per annum.

Another interpreter, a promoted student (married), who acts as assessor in the mixed court and judge of the consular court, occupies three rooms on the third floor of No. 14, for which he pays \$75 per annum.

The department has no information to indicate that the building rented by the United States Court is occupied other than for official purposes.

Nor has it any information regarding the postal agency, which is of course not under the jurisdiction

[Exhibit No. 2, page 36.]

of the Department of State.

I am, sir, your obedient servant,

JOHN B. MOORE.

Enclosures:

From Rufus H. Thayer, February 7, 1911.

To Rufus H. Thayer, March 14, 1911.

From Rufus H. Thayer, April 10, 1912.

To Rufus H. Thayer, May 31, 1912.

Decision in re will of John Pratt Roberts, May, 1907.

Lease of consular court, et cetera, premises at Shanghai, May 18, 1911.

From John M. Darral (sublease of postal agency), May 16, 1911.

To John M. Darral (sublease of postal agency), May 18, 1911.

From D. A. Wilson, jr. (sublease of U. S. Court, May 13, 1911.

To D. A. Wilson, jr. (sublease of U. S. Court), May 18, 1911.

From consul general at Shanghai, No. 614, February 20, 1913.

From consul general at Shanghai, No. 391, December 22, 1911.

From consul general at Shanghai, No. 452, March 16, 1912.

[Exhibit No. 3, page 1.]

IN THE UNITED STATES COURT FOR CHINA, AT SHANGHAI, MAY, 1907.

[Re probate of the will of John Pratt Roberts.]

SYLLABUS.

The United States has acquired by treaty and established by statute and regulation a jurisdiction in China intended to be adequate to the needs of American citizens resident therein. It is not, however, specifically provided that the courts of the United States in China shall exercise probate jurisdiction and, if such jurisdiction exists, it must be by virtue of general power under the treaties and of definite power under the common law extended by act of Congress to citizens of the United States and their property in China.

The common law courts of England exercised a definite probate jurisdiction previous to and concurrently with the ecclesiastical courts, and the common law of England is at the basis of the American law of administration.

Whereas courts of probate in the United States are created by statute, it is held that, by extending to the courts in China common law powers, Congress intended to give these courts powers necessary to put into effect the treaties and to meet the needs of citizens of the United States in China.

The consular courts of the United States in China were therefore made courts of probate; and the United States Court for China, having all of the jurisdiction of the consular courts, saving in minor actions, is a court of probate with full powers.

[Exhibit No. 3, page 2.]

OPINION.

Mrs. Rosalie Adelaide Jackson has filed in this court a document purporting to be the last will and testament of her father, Captain John Pratt Roberts, an American citizen, who resided in Shanghai at the date of his death, and she has asked that the same be admitted to probate.

The petition raises the question whether this court has jurisdiction in the matter of the administration of estates of Americans decedent in China. In order to determine this question it will be necessary to inquire into the probate jurisdiction of the American consular courts in China prior to the establishment of this court, because the latter has no jurisdiction that was not possessed by the former.

Section 1 of the act of June 30, 1906, creating this court, provides that it shall have exclusive jurisdiction in all judicial proceedings whereof jurisdiction may now be exercised by the United States consuls and ministers by law and by virtue of treaties between the United States and China, except in civil cases where the amount involved does not exceed five hundred dollars gold and in criminal cases where the punishment does not exceed a fine of one hundred dollars or sixty days' imprisonment, or both. In such cases the consuls retain jurisdiction.

There can be no doubt that China intended by the treaties of extraterritoriality to concede to the United States complete jurisdiction over Americans resident in China and over their property located in China; and it is equally certain that Congress, by enacting the statute of June 22, 1860, pursuant to the terms of the treaties and for the purpose of

[Exhibit No. 3, page 3.]

carrying the same into full force and effect, meant to extend to China a body of laws adequate to the needs of American citizens resident therein.

The treaty of 1858 provides in Article XXVII as follows:

"All questions in regard to rights, whether of property or of person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own Government."

A portion of the act of Congress of 1860 embodied in Revised Statutes, section 4085, enacted for the purpose of carrying into full effect the provisions of the treaties, provides in respect to ministers and consuls that "Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person."

This brings us to a consideration of the question whether Congress extended to China a system of laws relating to the administration of estates, which the above-named officers were to apply.

The answer to this question is found in the provisions of Revised Statutes, section 4086, which reads as follows:

"Section 4086. Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the

[Exhibit No. 3, page 4.]

terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law nor the law of equity or admiralty nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall by decrees and regulations which shall have the force of law supply such defects and deficiencies."

Since neither the general laws of the United States nor the laws relating in particular to extraterritorial jurisdiction contain specific provisions on the administration of estates, and since the minister has issued no regulations on the subject, it follows that the only source from which jurisdiction might be drawn was the common law.

The question now presents itself, Was the law of probate of wills and the administration of estates included in the "common law" which was extended to China by the statute?

The term "common law" has been interpreted by this court to mean: "Those principles of the common law of England and those statutes passed in aid thereof, including the law administered in the equity, admiralty, and ecclesiastical tribunals, which were adapted to the situation and circumstances of the American colonies at the date of transfer of sovereignty, as modified, applied, and developed generally by the decisions of the State courts and by the decisions of the

[Exhibit No. 3, page 5.]

United States courts, and incorporated generally into the statutes and constitutions of the States." (United States v. Biddle, March 6, 1907.)

In order to determine whether the law governing the administration of estates was covered by the common law as thus construed, it will be necessary to review the history of the law on the subject with a view to ascertaining, first, whether it was a part of the common law of England and the statutes passed in aid thereof, and, if so, second, whether it has been introduced into the United States as the basis of the American law of probate. On account of the meagerness of the library available to the court at the present time our investigation will be mainly confined to accounts contained in the commentaries of Blackstone and Kent, and Judge Woerner's work on "The American Law of Administration." The law governing the administration of estates in England is commonly referred to by text writers and judges as a part of the ecclesiastical law, which was administered exclusively in the ecclesiastical courts. Though there is warrant in the law for this conclusion by reason of the fact that ecclesiastical courts exercised almost complete jurisdiction over estates of deceased persons for a long period of time in England, yet it will be found upon a close examination of the history of the law that the subject was in fact covered by the common law, that estates were administered in the courts of common law prior to the establishment of the ecclesiastical courts, and that the common-law principles and procedure of the common-law courts appeared in the history of the administration of estates through all the centuries and have exercised a profound influence on the American law of administration.

[Exhibit No. 3, page 6.]

"With us in England," says Blackstone, "this power of bequeathing is coeval with the first rudiments of the law: for we have no traces or memorials of any time when it did not exist * * * But we are not to imagine that this power of bequeathing extended originally to all a man's personal estate. On the contrary, Glanvil will inform us that by the common law, as it stood in the reign of Henry the Second, a man's goods were to be divided into three equal parts: of which one went to his heirs or lineal descendants, another to his wife, and a third was at his own disposal * * * The shares of the wife and children were called their reasonable parts * * * This continued to be the law of the land at the time of Magna Charta * * * In the reign of King Edward the Third, this right of the wife and children was still held to be the universal or common law * * * In case a person made no disposition of such of his goods as were testable, whether that were only part or the whole of them, he was, and is, said to die intestate; and in such cases it is said, that by the old law the King was entitled to seize upon his goods, as the parens patriæ, and general trustee of the Kingdom. This prerogative the King continued to exercise for some time by his own ministers of justice; and probably in the county court where matters of all kinds were determined; and it was granted as a franchise to many lords of manors, and others, who have to this day a prescriptive right to grant administration to their intestate tenants and suitors, in their own courts baron, and other courts, or to have their wills there proved, in case they made any disposition. Afterwards, the Crown, in favour of the church, invested the prelates with

[Exhibit No. 3, page 7.]

this branch of the prerogative; which was done, saith Perkins, because it was intended by the law that spiritual men are of better conscience than laymen, and that they had more knowledge what things would conduce to the benefit of the soul of the deceased. The goods, therefore, of intestates were given to the ordinary by the crown; * * * And, as he had thus the disposition of intestates' effects, the probate of wills of course followed." (Book II, p. 491.) Continuing, in chapter seven of the third book of his commentaries, Blackstone, in discussing the jurisdiction of ecclesiastical courts, says: "Testamentary causes are the only remaining species belonging to the ecclesiastical jurisdiction; which, as they are certainly of a mere temporal nature, may seem at first view a little oddly ranked among matters of a spiritual cognizance. And, indeed, they were originally cognizable in the king's courts of common law, viz, the county courts; and afterwards transferred to the jurisdiction of the church by the favour of the Crown as a natural consequence of granting to the bishops the administration of intestates' effects. * * * At what period of time the ecclesiastical jurisdiction of testaments and intestacies began in England is not ascertained by any ancient writer. * * * It appears that the foreign clergy were pretty early ambitious of this branch of power. * * * It fell within the jurisdiction of the spiritual courts by the express words of the charter of King William I, which separated those courts from the temporal. And, afterwards, when King Henry I, by his coronation charter, directed that the goods of an intestate should be divided for the good of his soul, this

[Exhibit No. 3, page 8.]

made all intestacies immediately spiritual causes, as much as a legacy to pious uses had been before. This, therefore, we may probably conjecture, was the æra * * * when the king, by the advice of the prelates, and with the consent of the barons, invested the church with this privilege." (Book III, pp. 95-7.)

As far as we are able to ascertain, these deductions of Blackstone are based upon the rulings of the courts in the Hensloe case (Coke's Reports, Part IX, 36b) and in Snelling's case (Coke's Reports, Part V, 32b).

The court in Snelling's case held that: "If the ordinary took the goods into his possession, he was chargeable by the common law. And the statute of West, cap. 19, was made in affirmance of the common law."

The history of the law, as recited in the Hensloe case, seems to have met the approval of the annotator of Coke's Reports, who, in commenting upon the same, uses the following language: "It appears to have been a matter of great controversy, to whom the probate of wills and granting of administration originally belonged, and whether these matters were entirely of ecclesiastical cognizance; the better opinion seems to be that the probate of testaments did not originally belong to the ecclesiastical jurisdiction."

Again he says: "Wills may be proved, i. e., recorded in any of the courts of common law at Westminster and so likewise in the courts of equity, as the chancery or exchequer; so also in the chamber of the city of London, and divers other cities and towns; and many lordships and manors have

[Exhibit No. 3, page 9.]

an original right of proving wills. And upon the whole it appears, clearly, that the claim and practice of the spiritual courts in this particular was originally a mere usurpation."

This is also the view taken by Professor Stubbs in his work on the Constitutional History of England. He says: "The whole jurisdiction in questions of marriage was, owing to the sacramental character ascribed to the ordinance of matrimony, throughout Christendom a spiritual jurisdiction. The ecclesiastical jurisdiction in testamentary matters and the administration of the goods of persons dying intestate was peculiar to England and the sister Kingdoms, and had its origin, it would appear, in times soon after the Conquest. In Anglo-Saxon times there seems to have been no distinct recognition of the ecclesiastical character of these causes, and even if there had been they would have been tried in the county court. Probate of wills is also in many cases a privilege of manorial courts, which have nothing ecclesiastical in their composition, and represent the more ancient moots in which no doubt the wills of the Anglo-Saxons were published. As, however, the testamentary jurisdiction was regarded by Glanvill as an undisputed right of the church courts, the date of its commencement can not be put later than the reign of Henry I, and it may possibly be as old as the division of lay and spiritual courts." (Vol. III, p. 344.)

The trust thus vested in the prelates in the course of time was grossly abused. "The common law did not make him (the ordinary), being a spiritual governor, subject to temporal suits for such things. And this was a great defect in the common law."

[Exhibit No. 3, page 10.]

(Graysbrook v. Fox, 1 Plowd., 275, 277.) "The popish clergy," says Blackstone, "took to themselves (under the name of the church and the poor) the whole residue of the estate of the deceased, after the partes rationabiles, or two-thirds, of the wife and children were divided, without paying even his debts or other charges thereon. This led to the enactment of the Statute of Westminster II, directing the ordinary to pay the intestate's debts so far as his goods would extend. But even after this check to the exorbitant power of the clergy, whereby the ordinary was made liable to creditors, yet the residuum after payment of debts still remained in their hands, to be applied to whatever purpose his conscience should approve. It was the flagrant abuse of this power that again called for legislative interposition; by the Statute of 31 Edward III, c. 11, the estates of deceased persons were directed to be administered by the next of kin of the deceased, if he left no will, and not by the ordinary or any of his immediate dependants." (Woerner, American Law of Administration, vol. I, p. 316.) This statute put the representatives of the estates of intestates upon the same footing with respect to suits and accounting as executors and made them officers of the ordinary. By the statute of 21 Henry VIII, c. 5, the discretion of the ordinary in the appointment of administrators to intestate estates was enlarged, so as to authorize the appointment of either the widow, or the next of kin, or both. The Statutes of Distribution, 22 and 23 Charles II, c. 10, and 29 Charles II, c. 30, made distributable among the widow and next of kin, leaving in the hands

[Exhibit No. 3, page 11.]

of the administrator for his own use the third formerly retained by the church, until finally by the first statute of I James II, c. 17, this third was made distributable, as well as the remainder of the intestate estate. (1 Bradford Surrogate Reports, 26; Woerner, American Law of Administration, vol. 1, p. 316; Blackstone, Book II, p. 494, 495.)

The powers of the spiritual courts were thus restricted to the judicial cognizance of the class of cases arising out of the probate of wills, the granting of administration and the payment of legacies, and thus remained until, by the statute creating the court of probate, their powers in this respect were wholly abrogated. (20 and 21 Victoria, c. 77.)

We have thus traced in brief outline the history of the law of administration of estates in England, wherein it appears that it was a matter cognizable by the common law and in the common law courts until about the period of the Norman Conquest; that thereafter the jurisdiction over the estates of deceased persons was transferred to ecclesiastical courts, proceedings in which, says Blackstone, "were regulated according to the practice of the canon and civil law, or rather according to a mixture of both, corrected and new modelled by their own peculiar usages and interpositions of courts of common law." (Book III, p. 100.)

It now becomes necessary to consider how far the principles of the common law thus established and the statutes passed in aid thereof were introduced into the various States of the Union, and became incorporated into the American law of administration.

"The English law of devise," says Chancellor Kent, "was imported into this country by our ancestors, and incorporated into our colonial jurisprudence, under such modifications,

[Exhibit No. 3, page 12.]

in some instances, as were deemed expedient." (4 Commentaries 504.)

In discussing the administration of the estates of intestates the same author makes the following comment:

"To avoid repetition and confusion, I shall be obliged to confine myself essentially to the discussion of the leading principles of the English law, and assume them to be the law of the several States, in all those cases in which some material departure from them in essential points can not be clearly ascertained * * *

"(1) Of granting administration. When a person died intestate in the early periods of the English history, his goods went to the King as the general trustee or guardian of the State. This right was afterwards transferred by the Crown to the popish clergy; and, we are told, it was so flagrantly abused the Parliament was obliged to interfere and take the power of administration entirely from the church and confer it upon those who were disposed to a faithful execution of the trust. This produced the statutes of 31 Edward III, c. 11 and 21 Henry VIII, c. 5, from which we have copied the law of granting administration in this country * * *

"Before the revolution, the power of granting letters testamentary and letters of administration resided in New York, in the colonial governor, as judge of the prerogative court, or court of probates of the colony. It was afterwards vested in the court of probates." (2 Commentaries 408-9.)

[Exhibit No. 3, page 13.]

The learned chancellor then proceeds to give an account of the development of the probate courts, and the law of administration in New York, and indicates that the same were modelled after and based upon the principles of the common law.

Judge Woerner in his chapter on the subject of the probate powers as they existed at common law and under the English statutes, uses the following language:

"The common law of England, as affected by the statutes above named (and others relating to probate, which), were enacted before the settlement of the American colonies, is at the basis of the American statutes concerning administration, and the law in the American States in so far as it has not been supplanted by their own statutes." (Woerner, American Law of Administration, vol. 1, p. 316.)

He further states that the origin of our probate system, referable to the English spiritual courts, is still recognizable in the decisions of some States as to their mode of procedure, although the rules of the civil and common law which govern the ecclesiastical courts are necessarily greatly modified in the adaptation to widely different circumstances and to the spirit of the American people. In New Hampshire courts of probate "have a very extensive jurisdiction not conferred by statute, but by general reference to the law of the land, that is to that branch of the common law known and acted upon for ages, probate or ecclesiastical law," (*Morgan v. Dodge*, 44 N. H., 255, 258.) In California the superior

[Exhibit No. 3, page 14.]

court is by the constitution invested with jurisdiction over probate matters as a part of its general jurisdiction the same as its common law and equity powers, and is not, therefore, a statutory tribunal, although controlled in the mode of its action by the code. (*Burris v. Kennedy*, 108 Cal., 331, and *Heydenfeldt v. Superior Court*, 117 Cal., 348.)

While American courts of probate may properly be said to be purely creatures of statute at the present time, yet, as Judge Woerner has pointed out, the law administered in the Acts of Parliament prior to the date of the transfer of sovereignty. We think there can be no question about the proposition that Congress meant to extend the law of the administration of estates to China under the term "common law" as fully as it meant to extend the law of crimes, which must have been its first consideration in enacting the statutes for the purpose of carrying into force and effect the treaties of extraterritoriality with China.

We hold, therefore, that prior to the inauguration of this court, the consular courts of the United States in China had jurisdiction in the matter of the estates of Americans decedent in China, in all cases, and that now this court has jurisdiction in such matters when the value of the estate involved is above five hundred dollars, United States currency, the consular courts retaining their jurisdiction over those estates which are valued at less than this amount.

The will is admitted to probate and letters testamentary will issue forthwith.

(Signed) L. R. WILFLEY,
Judge of the United States Court for China.

SHANGHAI, CHINA, *May 15, 1907.*

[Exhibit No. 4, page 1.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, September, 1912.

I, the undersigned, clerk, United States consular court, do hereby certify that the documents, all documents and entries of civil action No. 7, hereto annexed and bound together with the consular seal, are true and faithful copies of the originals, the same having been carefully examined by me, and compared with the said originals, and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate general, the day and year above written.

T. C. WHITE,
Clerk, United States Consular Court.

[Exhibit No. 4, page 2.]

COPY OF CIVIL DOCKET ENTRIES, No. 7.

1910

K. Tom (tailor)	}	Debt and leaving jurisdiction.
<i>vs.</i>		
Miss S. Fischer, alias Thompson.		

May 31. Warrant issued for arrest.

Defendant arrested and brought to consulate.

Case docketed, warrant returned and filed.

Case settled out of court by defendant paying amount of claim, Mex. \$235 and costs, Mex. 15.25.

Prisoner released.

[SEAL.]

(Sgd.)

T. C. WHITE,
Clerk of Court.

The foregoing minutes are approved.

(Sgd.)

FRANK W. HADLEY,

Vice Consul General, acting judicially.

[Exhibit No. 4, page 3.]

In the United States Consular Court, Shanghai, China.

K. Tom, plaintiff,	}
<i>vs.</i>	
Miss S. Fischer, alias Thompson, defendant.	

The petition of the above-named plaintiff respectfully shows to this honorable court:

That the above-named plaintiff is a subject of the Chinese Empire and resides at Shanghai, in the Empire of China;

That the defendant, Miss S. Fischer, alias Thompson, is an American citizen, temporarily residing in Shanghai, China, and within the jurisdiction of this honorable court;

That the defendant, Miss S. Fischer, alias Thompson, is indebted to the plaintiff, K. Tom, in the sum of two hundred and thirty-five (235.00) dollars, Shanghai local currency, for clothing furnished and work performed by the plaintiff, K. Tom, during the month of April, 1910;

That the plaintiff, K. Tom, has requested the defendant, Miss S. Fischer, alias Thompson, to pay him the said sum of two hundred and thirty-five (\$235.00) dollars, Shanghai local currency, but the said defendant has refused and still refuses to pay the said sum or any part thereof;

That defendant, Miss S. Fischer, alias Thompson, is about to leave the jurisdiction of this court with the intent of evading the payment of said claim;

Wherefore plaintiff prays,

1st. For an order of arrest of said defendant;

2nd. For judgment against said defendant for the sum of two hundred and thirty-five (\$235.00) dollars;

3rd. For the costs of these proceedings; and

[Exhibit No. 4, page 4.]

4th. For such other, further, or different relief as to the court may seem meet.
Dated Shanghai, China, May 31st, 1910.

(Sgd.) K. Tom.

Subscribed and sworn to before me this 31st day of May, A. D. 1910.

[SEAL.]

(Sgd.) J. K. DAVIS,
American Deputy Consul General, Shanghai, China.

[Exhibit No. 4, page 5.]

In the United States Court for the Consular District of Shanghai.

AFFIDAVIT.

Personally appeared K. Tom, who makes oath that on during the month of April, 1910, at Shanghai, China, Miss S. Fischer, alias Thompson, a citizen of the United States of America, temporarily residing in Shanghai, Empire of China, became indebted to him for material furnished, clothing supplied, and work performed, in the sum of two hundred and thirty-five (\$235.00) Shanghai local currency, and that the said Miss S. Fischer, alias Thompson, unless restrained by an order of this honorable court will leave this consular jurisdiction on this date.

(Sgd.) K. Tom.

Subscribed and sworn to before me this 31st day of May, 1910.

[SEAL.]

(Sgd.) J. K. DAVIS,
Deputy Consul General.

In the United States Court for the Consular District of Shanghai.

SHANGHAI, *May 31st, 1910.*

The United States, K. Tom	} Charge of debt and leaving the consular juris-
<i>versus</i>	
Miss S. Fischer, alias Thompson.	diction and attempting to evade payment of
	the same.

TO THE MARSHAL OF THE SAID COURT:

You are hereby commanded to bring before me the body of Miss S. Fischer, alias Thompson, if found within this consular jurisdiction, to answer upon a charge of debt and leaving jurisdiction to evade payment of same.

And of this writ make due return.

[SEAL.]

(Sgd.) FRANK W. HADLEY,
U. S. Vice Consul General, Judge.

[Exhibit No. 4, page 6.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, May 31st, 1910.

Received from T. C. White, marshal consular court, the sum of \$228.13 Mex., being the amount of K. Tom's claim against S. Fischer, alias Thompson, in full of account.

(Sgd.) F. M. Brooks.

[Exhibit No. 4A.]

IN THE UNITED STATES COURT FOR CHINA.

SHANGHAI, CHINA, 31st of May, 1910.

In the matter of the application of Miss S. Fischer for a writ of habeas corpus.

To the honorable United States Court for China:

Your petitioner, S. Fischer, respectfully represents and shows to this honorable court that she is a native-born citizen of the State of California, and of the United States; that she is unjustly and unlawfully detained in the custody of T. C. White, the marshal of the United States consular court at Shanghai, on an alleged criminal charge of being indebted to a tailor, and is about to leave China while being so indebted, by virtue of a warrant of commitment, a copy of which is hereto attached marked Exhibit "A."

Your petitioner further shows that there is no judgment of a debt nor of anything else against her; that she has not been given the usual five days' notice to answer a civil action.

Wherefore petitioner prays for an order directing the clerk of this court to issue a writ of habeas corpus directed to said Marshal T. C. White to be made immediately returnable.

GEORGE F. CURTIS,
Attorney for Petitioner.

[Exhibit No. 4B.]

[The San Francisco Dramatic Review, February 19, 1910.]

SUE TUSHER.

The above likeness¹ is the dainty, sweet Sue Tusher, who is creating a lot of talk on account of her voice. Sue is singing now at the famous Poodle Dog Restaurant, and has become a great favorite since appearing there. Miss Tusher has a very fine dramatic soprano voice. She is spoken of and known as "Sue Tusher, the girl with the pretty face." If you want to hear a beautiful voice, don't miss Sue, any evening, at the Poodle Dog. Miss Tusher has had some flattering offers to do concert work, but prefers remaining where she is known and recognized as a favorite.

¹ Likeness not printed.

[Exhibit No. 5, page 1.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, September 19, 1912.

I, the undersigned, deputy consul general of the United States of America, do hereby certify that the documents constituting all the papers in civil action No. 43, hereto annexed and bound together with the consular seal, are true and faithful copies of the originals, the same having been carefully examined by me and compared with the said originals and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate general the day and year above written.

[SEAL.]

T. C. WHITE,
American Deputy Consul General.

[Exhibit No. 5, page 2.]

COPY OF CIVIL DOCKET ENTRIES.

Deposit gold \$20.00.

G. F. Curtis, lawyer for plaintiff.

Tze Hai Ching, plaintiff, }
 vs. } Civil action No. 43.
 Chas. A. Biddle, defendant. }

1912.

June 13. Petition sworn to and filed.

Gold \$20.00 deposited as security for costs.

This being a petition for a writ of *ne exeat*, the matter was taken under consideration by the judge of the court before allowing the issue of an order to answer.

June 14. Opinion rendered that this court has no jurisdiction of the case and the petition was refused.

NOTE—See documents filed in court records.

(Sgd.) T. C. WHITE,
Clerk, United States Consular Court.

The foregoing minutes are hereby approved.

(Sgd.) NELSON TRUSLER JOHNSON,
Judge Consular Court.

[Exhibit No. 5, page 3.]

Received from T. C. White, clerk and marshal of the U. S. Consular Court, Shanghai, the sum of U. S. currency dollars thirteen and cents five and Mexican cents eight only, being balance of deposit of gold currency twenty for court fees and certificate of petition and motion in case of Tze Hai Ching *vs.* Chas. A. Biddle.

(Sgd.) G. F. CURTIS.

[Exhibit No. 5, page 4.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, August 6, 1912.

I, the undersigned, deputy consul general of the United States of America, do hereby certify that the documents hereto annexed and bound together with the consular seal are true and faithful copies of the originals, the same having been carefully examined by me and compared with the said originals and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate general the day and year above written.

[SEAL.]

T. C. WHITE,
American Deputy Consul General.

[Exhibit No. 5, page 5.]

IN THE UNITED STATES CONSULAR COURT,
Shanghai, China, 13th June, 1912.

Sze Hai Ching, plaintiff, }
vs. } Original bill in equity. Case No. —.
Chas. A. Biddle, defendant. }

To the honorable vice consul general of the United States at Shanghai, China, acting judicially as judge of the United States Consular Court.

1. Sze Hai Ching, a Chinese subject, brings this his bill against Chas. A. Biddle, a citizen of the State of California of America, heretofore engaged in the hotel business in Shanghai, China, and now about to depart to the United States on board the S. S. *Persia* of the Pacific Mail S. S. Co., leaving Shanghai on the 14th day of June, 1912;

2. That on the 23rd day of October, 1911, a judgment was rendered in the United States Court for China against the defendant for \$2,954.92 (a certified copy of which is hereto annexed) after the defendant had confessed judgment on said date, which judgment is still in force, no part thereof having been paid;

3. That a writ of execution was duly issued by said court on said judgment and a return made thereon of *nulla bona*;

4. That the defendant has booked a passage for himself and wife on the Pacific Mail Company's S. S. *Persia* for San Francisco, Cal., leaving Shanghai on the 14th day of June, 1912, and your orator verily believes that if the defendant be allowed to leave the jurisdiction of this court the plaintiff's debt will either be entirely lost to him or the recovery thereof greatly endangered;

5. Your orator respectfully shows that the honorable judge of the United States Court for China has left the Empire of China, having left Harbin on the 23rd day of May, 1912, for

[Exhibit No. 5, page 6.]

Europe, and will not return, as your orator is informed and believes, until October or November this year, and for this reason your orator can obtain no relief before that court to enforce his judgment to the full amount, therefore your orator seeks relief in the United States Consular Court, which has a jurisdictional limit of \$500.00 gold, to recover this said amount of \$500.00 gold against the defendant on his outstanding judgment of Mexican dollars 2,954.72;

Wherefore your orator prays as follows:

1. That this court grant him a writ of *ne exeat republica*, restraining and forbidding the said Chas. A. Biddle, the defendant hereinbefore named, from departing beyond the limits of China and out of jurisdiction of this court without leave of this court first had;

2. That your orator may have the discovery of the assets of the defendant and his means, or ability to pay the above judgment, to this end therefore that the defendant may if he can show why your orator should not have the relief hereby prayed and may upon his oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth and attached hereto;

3. That the court under the said writ of *ne exeat* restrain the defendant from departing from China until the sum of \$500.00 gold, the jurisdictional limit of this United States Consular Court, be paid against the said judgment of the United States Court for China for Mexican dollars 2,954.72.

GEORGE F. CURTIS,
Counsel for Plaintiff, 12, Whiteaway, Laidlaw Bldg., Nanking Road.

[Exhibit No. 5, page 7.]

United States Consular District, } ss.
Shanghai, China. }

On this 13th day of June, 1912, before me personally appeared George F. Curtis, counsel for the above-named plaintiff, who made solemn oath that he had read the foregoing bill of complaint, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge.

GEORGE F. CURTIS.

Subscribed and sworn to before me this 13th day of June, 1912.

T. C. WHITE,
Clerk, United States Consular Court.

[Exhibit No. 5, page 8.]

INTERROGATORIES.

1. What interest have you, if any, in the "Savoy Hotel"; if no interest now, have you had any interest; and if so, what have you done with it?

2. Have you any bank account in the International Bank or in any other bank at Shanghai? If you have no bank account now, did you not have a deposit in the International Bank; and if so, what has become of this deposit and what amount was the deposit when you withdrew it?

3. Have you any property in Shanghai, real or personal?

4. Have you any outstanding accounts or debt owing you; and if so, by whom and the nature of said debt.

5. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

[Exhibit No. 5, page 9.]

In the United States Court for China.

Sze Hai Ching, plaintiff, }
 vs. }
 Chas. A. Biddle, defendant. }

CONFESSION JUDGMENT.

Now comes the defendant, and, withdrawing the demurrer filed herein, hereby consents to and confesses judgment for the principal sum claimed by the plaintiff in the amended petition on file herein, together with interest thereon from the 8th day of January, 1908, at such rate as may be fixed and allowed by this honorable court.

C. A. BIDDLE, *Defendant*.

SHANGHAI, Oct. 23, 1911.

[Exhibit No. 5, page 10.]

MONDAY, OCTOBER 23, 1911.

In open court.

Sze Hai Ching }
 vs. } Civil action No. 97.
 Charles A. Biddle. }

Present: Hon. Rufus H. Thayer, judge, presiding; George F. Curtis, Esq., attorney for plaintiff; William S. Flemming, Esq., attorney for defendant.

Confession of judgment having been filed, judgment rendered for Mexican dollars 2,954.72, together with interest at 7 per cent per annum from January 8th, 1908, to this date.

[Exhibit No. 5, page 11.]

In the United States Court for China.

CERTIFICATE.

I, James B. Davies, clerk of the United States Court for China, hereby certify that I have compared with the originals of record in the registry of the court the copies of documents hereto attached under seal of court, namely, United States Court for China, civil action No. 97: Sze Hai Ching *v.* C. A. Biddle, confession of judgment, clerk's minute entry of October 23, 1911; and that I find the same to be a true copy and of the whole of said originals.

Witness the seal of court, with my hand hereunto set, at Shanghai, China, June thirteenth, 1912.

[L. S.]

(Sgd.)

JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 5, page —.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, ———, 19—.

I, the undersigned, deputy consul general of the United States of America, do hereby certify that the documents hereto annexed and bound together with the consular seal are true and faithful copies of the originals, the same having been carefully examined by me and compared with the said originals and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate general the day and year above written.

[SEAL.]

T. C. WHITE,
American Deputy Consul General.

[Exhibit No. 5, page 12.]

In the United States Consular Court, Shanghai, China.

Sze Hai Ching, plaintiff, }
 vs.
Chas. A. Biddle, defendant. }

Now comes the plaintiff in the above-entitled cause by his attorney and moves this honorable court to grant a writ of *ne exeat* in accordance with the prayer of the bill in this cause.

GEORGE F. CURTIS,
Counsel for Plaintiff, 12, Whiteaway, Laidlaw Bldg., Nanking Road.

[Exhibit No. 5, page 13.]

In the United States Consular Court, Shanghai, China.

Sze Hai Ching, plaintiff, }
 vs.
Chas. A. Biddle, defendant. }

Upon motion first made by attorney for the plaintiff and upon reading an affidavit of his said counsel filed in this cause and the clerk's certificate of the filing of the plaintiff's bill in this cause on the 13th day of June, 1912, this court orders that a writ of *ne exeat republica* do issue against the said defendant, Chas. A. Biddle, until this court make another order to the contrary; and the said writ to be marked for security in the sum of \$500.00 lawful money of the United States.

Judge Consular Court.

In the United States Consular Court, Shanghai, China.

*The President of the United States of America to the Marshal of the Consular Court,
Shanghai, China, greeting:*

Therefore, in order to prevent this injustice, we do hereby command you that you do, without delay, cause the said Chas. A. Biddle personally to appear before you, and give sufficient bail or security in the sum of five hundred dollars lawful money of the United States that the said Chas. A. Biddle will not go or attempt to go into parts without the Empire of China without leave of our said court; and in case the said Chas. A. Biddle shall refuse to give bail or security, then you are to commit the said Chas. A. Biddle to our consular jail, there to be kept in safe custody until he shall do it of his own accord; and when you shall have taken such security you are forthwith to make and return a certificate thereof to us in our said consular court, Shanghai, China, distinctly and plainly under your hand, together with this writ.

[Exhibit No. 5, page 15.]

George F. Curtis, Esq., Dr. to American Consulate General.

(\$ 1 G.= \$2.09 Mex., Government rate.)
Received payment.

[Exhibit No. 5, page 16.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, Aug. 6, 1912.

Statement of court fees in civil action No. 43—Tze Hai Ching v. Chas. A. Biddle.

G. \$2.55 at Govt. rate Mex. \$2.18=Mex. \$5.60.

T. C. WHITE,
Clerk, United States Consular Court.

[Exhibit No. 5, page 17.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, June 13, 1912.

Received from G. F. Curtis the sum of gold \$20.00 deposit security for costs in civil action Sze Hai Ching vs. Chas. A. Biddle.
Gold \$20.00.

T. C. WHITE,
Clerk, United States Consular Court.

[Exhibit No. 5, page 18.]

No. 50.]

UNITED STATES CONSULAR COURT,
Shanghai, China, June 14, 1912.

Tz Hai Ching v. Charles A. Biddle.

G. F. CURTIS, Esquire,
Shanghai.

SIR:

1. I would hand you herewith my decision regarding your petition for a writ of *ne exeat* in the above case.

I am, sir, your obedient servant,

NELSON TRUSLER JOHNSON,
American Vice Consul General Acting Judicially.

Enclosure: As stated.

[Exhibit No. 5, page 19.]

In the United States Consular Court for the Consular District of Shanghai, China.

Tze Hai Ching }
v.
Charles A. Biddle. }

This is an action on a judgment rendered in the United States Court for China on October 23, 1911, in favor of the plaintiff and against the defendant for Mexican \$2,954.92, as to which the petitioner alleges that execution was duly issued and returned *nulla bona* and that no payment has been made. The petition is for a writ of *ne exeat*, for discovery of assets and for an order of court in said writ restraining the defendant from departing from China "until the sum of gold \$500.00, the jurisdictional limit of this court, be paid against said judgment."

This consular court has a limited jurisdiction described in the statute as not exceeding, as to value of property, gold \$500.00, and in order to consider the prayer of petitioner it would be necessary to decide whether a judgment of approximately gold \$1,450.00 had been entered. It would further be necessary to decide, as this a bill in equity, whether all the remedies at law for the obtaining of satisfaction of that judgment had been exhausted. This is manifestly beyond the jurisdiction of this consular court, and the bill is therefore refused.

[SEAL.]

NELSON TRUSLER JOHNSON,
Vice Consul General of the United States of America Acting Judicially.

SHANGHAI, June 14, 1912.

[Exhibit No. 5, page 20.]

AMERICAN CONSULATE GENERAL,
Shanghai, China, August 8, 1912.

I, the undersigned, deputy consul general of the United States of America, do hereby certify that the document hereto annexed and bound together with the consular seal is a true and faithful copy of the original, the same having been carefully examined by me and compared with the said original and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate general the day and year above written.

[SEAL.]

T. C. WHITE,
Clerk, United States Consular Court.

[Exhibit No. 5, page 21.]

In the United States Consular Court for the Consular District of Shanghai, China.

Tze Hai Ching }
v. }
Charles A. Biddle. }

This is an action on a judgment rendered in the United States Court for China on October 23, 1911, in favor of the plaintiff and against the defendant for Mexican \$2,954.92, as to which the petitioner alleges that execution was duly issued and returned *nulla bona* and that no payment has been made. The petition is for a writ of *ne exeat*, for discovery of assets and for an order of court in said writ restraining the defendant from departing from China "until the sum of gold \$500.00, the jurisdictional [N. T. J.] limit of this court, be paid against said judgment."

This consular court has a limited jurisdiction described in the statute as not exceeding, as to value of property, gold \$500.00, and in order to consider the prayer of petitioner it would be necessary to decide whether a judgment of approximately gold \$1,450.00 had been entered. It would further be necessary to decide, as this is a bill in equity, whether all the remedies at law for the obtaining of satisfaction of that judgment had been exhausted. This is manifestly beyond the jurisdiction of this consular court, and the bill is therefore refused.

[SEAL.]

(Sgd.)

NELSON TRUSLER JOHNSON,

Vice Consul General of the United States of America Acting Judicially.

SHANGHAI, June 14, 1912.

[Exhibit No. 6.]

SHANGHAI, 13th March, 1912.

Received from Mr. George F. Curtis the sum of Mexican dollars fifteen, deposit to secure costs of the Fi. Fa. in the case of Sze Hai Ching vs. Chas. A. Biddle.

JAMES B. DAVIES,
Clerk of U. S. Court.

[Exhibit No. 6A, page 1.]

GEORGE FRANKLIN CURTIS,
ATTORNEY AND COUNSELLOR-AT-LAW,
WHITEAWAY LAIDLAW BUILDING, 13 NANKING ROAD,
Shanghai, China, May 6th, 1912.

SIR: I send you G\$35.00 to be deposited in case of Sze Hai Ching against Mr. Chas. A. Biddle, and ask the marshal to execute writ, and if necessary to issue another, at once on Mr. Biddle on the monies in Mr. Biddle's name in the International Bank in 1, Kiukiang Road, Shanghai.

I am, sir, your obedient servant,
To CLERK OF U. S. COURT.

GEORGE F. CURTIS.

[Exhibit No. 6A, page 2.]

No. 742.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, May 6, 1912.

Civil action No. 97:

Sze Hai Ching v. C. A. Biddle.

GEORGE F. CURTIS, Esquire,
Attorney and Counselor at Law,
Shanghai, China.

DEAR SIR: I beg to acknowledge receipt of your letter of to-day's date in the above-entitled cause, enclosing gold \$35.00 to cover costs on execution. Receipt for same is enclosed herewith.

In the event of the marshal requiring an alias writ, the same will be issued.

Yours, truly,

JAMES B. DAVIES,
Clerk of Court.

Enclosure: Receipt.

[Exhibit No. 6A, page 3.]

Gold \$35.00.]

SHANGHAI, CHINA, May 6, 1912.

Civil Action No. 97:

Sze Hai Ching v. C. A. Biddle.

RECEIPT.

Received from George F. Curtis, Esquire, the sum of gold \$35.00 as additional deposit on account of costs of execution in the above-entitled cause.

JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 6A, page 4.]

No. 772.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, June 13, 1912.

Civil action No. 97:

Sze Hai Ching v. C. A. Biddle.

GEORGE F. CURTIS, Esquire,
Attorney and Counselor at Law,
Shanghai, China.

SIR: I beg to return to you herewith the gold \$35.00 sent me on May 6, 1912, as a deposit to cover costs of execution in the above-entitled matter. Kindly sign and return the enclosed receipt.

Yours, truly,

JAMES B. DAVIES,
Clerk of Court.

Enclosure: Receipt.

[Exhibit No. 7, page 1.]

No. 201.]

UNITED STATES COURT FOR CHINA,
*Shanghai, China, February 1, 1911.*GEORGE F. CURTIS, Esquire,
Whiteaway, Laidlow & Co. Bldg., Shanghai.

DEAR SIR: With reference to the papers left with me this afternoon, before receiving and subscribing to the same I beg to call your attention to section Nos. 58 and 71 of the United States Consular Regulations for China, which have been brought to my notice by the United States district attorney.

Yours, truly,

JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 7, page 2.]

John M. Darrah, a citizen of the United States, is accused by the undersigned, a merchant residing and transacting business in Shanghai, of the crime of felony, to wit: Perjury committed as follows:

That the said John M. Darrah, on the 26th day of February, 1907, at Shanghai, was the duly appointed, qualified, and acting deputy marshal of the United States Court for China; that as said marshal it was then and there his duty under the laws of the United States to certify under oath to the correctness of a certain fee paid to the undersigned, and to fees paid to a certain interpreter and to certain witnesses; that in pursuance to his said duty he, the said John M. Darrah, on the said 26th day of February, 1907, came and appeared at the United States court before F. E. Hinckley, clerk of the United States Court for China, an officer authorized by law to administer oaths and to administer an oath to the said John M. Darrah; that the said F. E. Hinckley did then and there on the 26th day of February, 1907, administer an oath in due form of law to the said John M. Darrah, and being so sworn as aforesaid he, the said John M. Darrah, did then and there on the 26th day of February, 1907, at Shanghai, China, and in the proceeding entitled *The United States versus S. R. Price, Schedule of Marshal Fees and Costs*, unlawfully, knowingly, corruptly, falsely, and feloniously swear, take oath, and certify that the items in said schedule were correct, and that they constituted the full record of fees and costs of the marshal in the said entitled proceeding, whereas in truth and in fact, as the said John M. Darrah then and there well knew, the said schedule was not true and correct; that the undersigned was not paid the fee therein named nor any other fee nor did he receive from the United States nor from S. R. Price or anyone else the fee therein named or any fee or money whatsoever as a witness in said action.

Whereby he, the said John M. Darrah, did then and there as aforesaid feloniously, wilfully, knowingly, and corruptly swear falsely and feloniously commit wilful perjury contrary to the form and force of the statute in such cases made and provided, to wit, section 5392 U. S. Rev. Statutes, 1878, and United States Penal Code, section 125, defining the crime of perjury and contrary to the peace and dignity of the people of the United States of America.

Wherefore the undersigned prays this honorable court for the arrest and trial of the said John M. Darrah on the above charge of perjury.

O. E. LAURA,
78 Range Road.

Subscribed and sworn to before me this 28th day of January, 1911.

JAMES B. DAVIES,
Clerk of U. S. Court.

[Exhibit No. 8, page 1.]

No. 425.]

UNITED STATES COURT FOR CHINA,
Shanghai, China, October 6, 1911.

Civil Action No. 98:

Nee Chang Mow *v.* Andrews and George.Mr. NEE CHANG MOW,
Care of G. F. Curtis, Esquire, Attorney,
*Shanghai, China.*To the clerk of the United States Court for China, American Consulate, Shanghai,
China, debtor:

October 6, 1911. On filing petition, petitioner's deposit account of costs
of action.....Gold \$35.00
At United States Treasury rate 416, December quarter, 1911, equivalent
to.....Mex. \$84.13
Received payment, October 6, 1911, by cash, gold, \$35.

JAMES B. DAVIES,
Clerk of Court.

[Exhibit No. 8, p. 2.]

IN THE UNITED STATES COURT FOR CHINA,
Shanghai, China, October 6th, 1911.

Nee Chang Mow

vs.

H. W. Andrews and E. W. George,
doing business under the firm name of Andrews & George, and against
H. W. Andrews and E. W. George, severally and jointly.

} A m e n d e d
} declaration.
} A c t i o n o n
} judgment.

For complaint herein the plaintiff alleges as follows:

1. That on or about the 30th day of October, 1902, the plaintiff duly commenced an action in the court of the United States consulate general at Shanghai, China, which said court was a court of special jurisdiction duly created by the laws of the United States, against the defendants, by process of subpoena duly issued in said action, which was duly served upon the defendants in said Shanghai, China; that defendants duly appeared in said action by attorney, and that the said defendant, H. W. Andrews, appeared in person, and that such proceedings were thereupon duly had in said action; that on or about the 8th day of January, 1903, the plaintiff recovered a judgment, which was duly given by said court, against the defendants for the sum of Shanghai taels 2,370.48, with interest at the rate of 7 per cent from January 1st, 1903, and costs; that by said judgment "it appears that plaintiff has paid to defendant roubles 6,691.02 at 111—taels 6,027.95—for which amount Friede is suing Andrews and George, who are in that suit acting as agents for plaintiff. While the defendants hold this sum, it is in the nature of a guaranty and must stand without any award regarding it until the outcome of the suit of Friede *v.* Andrews and George is seen;" that said suit of said Friede against said defendants has never been tried; that the defendants still hold the plaintiff's

[Exhibit No. 8, page 3.]

said taels 6,027.95, notwithstanding the fact that they are not within the jurisdiction of Russia, nor does it appear from the said judgment that they have any property in Port Arthur or elsewhere attached, or otherwise, nor is a suit pending in Port Arthur against them by said Friede, nor is it possible for a suit to pend against them in a Russian court in Port Arthur, as Port Arthur is now in the hands of the Japanese Government, of which fact the plaintiff prays this court to take judicial notice; that no part of said judgment for said sum of taels 2,370.48, nor costs nor interests has been paid, and no accounting for the said sum of taels 6,027.95 has been made.

2. That the said suit of Friede *vs.* Andrews & George was never tried at Port Arthur or elsewhere; that shortly after the said judgment was rendered it became impossible to try said case in Port Arthur by reason of the threatened and actual state of war between Russia and Japan, of which fact the plaintiff prays this court to take judicial notice.

3. That the said defendants have ever since retained the sum of taels 6,027.95, the property of the plaintiff and have refused to account therefor, although requested so to do.

4. That after the rendition of said judgment and the ending of said war the said defendants, who up to this time had been copartners in business in Shanghai, incorporated under the Hongkong ordinances under the name of Andrews Von Fischerz & George, Ltd., transferred said business and its assets within the jurisdiction of this honorable court to the protection of the British flag by virtue of the said incorporation under the said Hongkong ordinance, and thereafter the said defendants went to Yokohama, Japan, where they as copartners under the firm name of Andrews & George, transact a mercantile business.

[Exhibit No. 8, page 4.]

5. That the said court of the consulate general at Shanghai, at the time of the rendition of said judgment, was a court of special jurisdiction which on the 30th day of June, 1906, in all cases involving more than \$500.00 U. S. currency, was transferred to this honorable court by virtue of the laws of the United States.

6. That by the said judgment it appears that the said defendants admitted overcharging the plaintiff the sum of taels 968.62 and deposited the said sum of taels 968.62 in court, but the same has not been paid by the said court to this plaintiff.

7. That said judgment has not been satisfied, vacated, reversed, modified or appealed from and is now in full force and effect.

8. That the said judgment is for a sum more than \$500.00, lawful money of the United States, and that the defendant, H. W. Andrews, is temporarily within the jurisdiction of this honorable court.

9. That the defendant, H. W. Andrews, as evidenced by said judgment, is greatly indebted to the plaintiff, and designs quickly to go into parts without the jurisdiction of this honorable court, which tends to the great prejudice and damage of the said plaintiff.

Wherefore the plaintiff prays, as follows, namely:

1st. Judgment against the defendants jointly and severally for the sum of Shanghai taels 2,370.48, with interest at the rate of 7 per cent per annum from the 1st day of January, 1903, to payment thereof;

2d. For costs expended in said court of the United States consulate at Shanghai, as official court fees;

3d. For an accounting of the said sum of taels 6,027.95, with interest thereon at 7 per cent per annum from the 1st day of January, 1903, to date of payment thereof;

4th. That a writ of *ne exeat republica* do issue against the said defendant H. W. Andrews, until the court

[Exhibit No. 8, page 5.]

make another order to the contrary, and that the said writ be marked for security in the sum equalling to—

(a) The amount of said judgment;
 (b) Amount for which said accounting is prayed;
 (c) Interest at 7 per cent per annum on both said sums from 1st January, 1903, to date hereof;

(d) Cost of said consular court, together with costs of this court;

5. And for such other and further relief as to this honorable court seems meet and just.

GEORGE F. CURTIS,
Attorney for Plaintiff, Whiteaway Laidlaw Building, Shanghai.

[Exhibit No. 8, page 6.]

UNITED STATES CONSULAR DISTRICT,
Shanghai, China, ss.

Nee Chang Mow, being first duly sworn, deposes and says: That he is the plaintiff named in the above-entitled action; that he has read the foregoing declaration and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

NEE CHANG Mow, in Chinese characters.

Subscribed and sworn to before me, this 17th day of October, 1911.

(J.-B. D.)

[SEAL.]

JAMES B. DAVIES,
Clerk United States Court for China.

[Exhibit No. 8, page 7.]

NEE CHANG MOW VS. ANDREWS AND GEORGE.

DECISION.

On April 8, 1902, the following contract was entered into between Andrews and George of Shanghai and the Nee Chang Mow Hong:

(Exhibit G.)

CONTRACT.

PORT ARTHUR, 18/31 March, 1902.

This agreement, made the 18/31st day of March, 1902, by and between G. S. Friede, of Port Arthur, party of the first part, and Andrews and George, of Shanghai, China, party of the second part, witnesseth: That the party of first part agrees to sell and hereby does sell to the party of the second part certain merchandise, to wit, a certain quantity of used copper and brass cartridge shells, amounting to say approximately 3,900 poods of copper and 9,900 poods of brass, on the following terms: Term one: The price of copper to be six roubles per pood, net weight, and price of brass to be 4 roubles and 35 kopecks per pood, net weight, 10% of the copper to be charged for as brass, as an allowance for brass shells which may be mixed with the copper. These prices are to be f. o. b. steamer at Port Arthur. Weights to be taken at ship's side, and both parties to have a representative present to inspect and pass on the weights and conditions of cargo. Term two: The cargo to be delivered f. o. b. steamer Port Arthur in not less than two or more than four lots, delivery to be made within thirty days from date. Payment. Buyer to open bankers credit in favor of seller and payment to be made against surrender of shipping documents to buyer's bankers at Port Arthur. Term four: The buyers, if requested by sellers, agree to arrange with their bankers to have the latter pay the Russian Government ninety per cent of the value of goods upon arrival at Port Arthur pending their delivery on board steamer, but any expense incurred by such arrangement to be borne solely by the seller. Term five: The buyer to have the privilege of

[Exhibit No. 8, page 8.]

designating steamer or steamers by which cargo shall be shipped. Term six. Cargo to be delivered in bags in good shipping condition and marked so as to plainly distinguish between copper and brass. Term seven. The foregoing prices are net and free of any other charges or commission whatsoever. Term eight. The cargo in question is that which was inspected in Mukden, Manchuria, on March 9-22, 1902, by seller and buyer's representative. The agreement to be considered binding on both parties upon the deposit of 5,000 roubles, or a suitable guarantee for that amount by both parties with bankers at Port Arthur, as a guarantee of the faithful performance of this contract. Said 5,000 roubles to be forfeited by the party defaulting in the performance of their agreement to the other party. In witness whereof both parties have affixed their signature the 18/31st day of March, 1902.

(Exhibit H.)

SHANGHAI, 8th April, 1902.

NEE CHANG MOW, Esq., present.

DEAR SIR: We beg to advise having purchased for your account subject in all particulars to our contract with Mr. G. S. Friede of Port Arthur, copy of which is herewith attached, a quantity of old metal, as follows: About 10,000 poods brass at roubles 4.35 f. o. b. Port Arthur; about 3,900 poods copper at roubles 6 f. o. b. Port Arthur, more or less, which according to our agreement with you, you are to receive and pay for as follows: First, security.—As evidence for the faithful performance of this contract, you are to deposit with us the sum of tael 5,000. This amount we are to hold as security of this contract until all payments have been satisfactorily made by you and the entire purchase landed and delivered in Shanghai. As soon as the entire shipment has been delivered to you, then we are to return to you these tael 5,000. Second, payment.—Further, according to agreement you are to open a credit with the Russo-Chinese Bank in our favor for the amount of the above purchase,

[Exhibit No. 8, page 9.]

so that we may receive payment upon presentation of our sixty days after sight draft on you with B/lading attached in Port Arthur, said draft to be drawn in roubles and to be retired under contract settled by us for you to-day at 112 $\frac{5}{8}$ with the Russo-Chinese Bank. Third, shipment.—Your representative to proceed to Port Arthur at once to be present at weighing of the cargo as per our contract with Mr. Friede.

Fourth, freight, insurance, duties, as well as any and all charges incurred after cargo is on board steamer to be paid by us for your account, all amounts for these purposes to be paid us by you as required.

With the exception of roubles 500, which is one-half the amount to be paid for military protection by the Russian Government, you are to have no further expense in the transaction except actual outlays which it will be necessary for us to make so as to deliver the cargo safely in Shanghai.

All such amounts to be for your account and to be charged you at actual cost, you to have the benefit of any saving we can make. All such payments to be made by us, which amounts you are to reimburse us with at the time of payment if requested.

Fifth, commission.—In consideration of the above you agree to pay us 2 $\frac{1}{2}$ per cent commission on actual cost price of the cargo landed in Shanghai. Thanking you to confirm the above.

We are, dear sir, very truly, yours,

(Signed)

ANDREWS & GEORGE,
J. H. RANGER, *Manager*.

ANDREWS & GEORGE, present.

DEAR SIR: The above is in accordance with my understanding of my purchase of old metal through you and I obligate myself to carry out the agreement as set forth.

Very truly, yours,

CHOP. (NEE CHANG MOW.)

[Exhibit No. 8, page 10.]

On April 23, 1902, the first cargo of 7,500 poods was forwarded to Shanghai by the Russo-Chinese Bank at Port Arthur. 90% of the contract price of the copper and brass said to be contained therein had been paid prior to the shipment. The representatives of Andrews & George and of Nee Chang Mow protested against this shipment and declined to receive it as under the contract. About April 27th, 1902, the second and final cargo was ready for shipment and Mr. Chang Mow testifies that he inspected and agreed to receive 10 cars of it subject to a discount of 10% for lead and dirt. Mr. Comstock and Mr. von Fischerz testify that Mr. Chang Mow agreed to receive all of the second cargo subject to 10% discount. The second cargo was shipped on April 30 and a draft was drawn for rubles 69,132.11, as per the following bill.

(Exhibit K.)

PORT ARTHUR, NORTH CHINA,
April 30, 1902.

Messrs. Nee Chang Mow, Dr. to Andrews and George.

Copper.....	3,850 poods 10 lbs.
Less 10%.....	385 poods as brass.
	<hr/>
	3,465 poods 10 lbs.
@ Rs. 6 per pood 20,791.50:	
10% copper as brass.....	385 poods.
1st shipment April.....	3,649 poods 30 lbs.
2nd shipment on 30th April.....	6,567 poods 10 lbs.
	<hr/>
	10,602 poods at Rs. 4. 35.
Brass, per pood, 46,118 70:	
Freight on, say, 221 tons, at M. \$3.00 per ton, M. \$663.00 @ exchange	
123 $\frac{3}{4}$	535. 76
	<hr/>
	67,445. 96
Commission, 2 $\frac{1}{2}$ %.....	1,686. 15
	<hr/>
E. & O. E.....	Rs. 69,132. 11

(Exhibit L.) E. & O. E.

Same as above.

(Exhibit M.)

Mr. Nee Chang Mow, Dr., to the Russo-Chinese Bank, B. R.: Rbls., No. 31, Port Arthur Branch No. 582.

To your acceptance, due 14/7/1902:	Taels.
Rbls. 69,132.11, at 111=Shanghai tls.....	62,281. 18
Interest, at 7%, from 30/4 to 25/8=117 days.....	1,397. 49
	<hr/>
Balance due.....	63,678. 67
9997—13——17	

[Exhibit No. 8, page 11.]

	Taels.
To paid Butterfield and Swire, boat hire on shells, 26/5.....	63. 16
To paid American consul for protesting draft \$6.10.....	4. 57
To paid Russian consul for protesting draft Rbls. 208.89.....	187. 75
To paid for survey report, fire insurance, telegrams, and sundry charges...	389. 81

(Received payment) Shanghai tls..... 64, 323. 96

This was paid on August 26th, and both cargoes received by Nee Chang Mow. In the meantime, Friede had brought suit in Port Arthur for the unpaid 10% of the first cargo; and Mr. Comstock, plaintiff's witness, testifies that Mr. Chang Mow agreed that the discount to be taken on the second cargo should be fixed by the decision of the Russian court as to the first cargo. It is testified that the lower court has decided against Friede, who has appealed, and the appeal has not yet been decided.

The plaintiff sues for damages under the contract and files the following bill of particulars:

BILL OF PARTICULARS.

The plaintiff, through the defendants' false and fraudulent representations which the defendants knew at the time to be false and fraudulent, and which the defendants made with the intent to defraud the plaintiffs, the plaintiffs claim and allege that they are damaged to the amount of the items severally following, to wit:

	Taels.
No. 1. The difference between the false invoice to wit: Roubles 4.35, the defendants' alleged price paid for brass per pood for 10,000 poods, and the actual cost price of same, to wit: Roubles 4.25, making roubles 1,000, equaling.....	945. 00
No. 2. Difference between invoice weight and surveyed weight of copper and brass cargo, showing 15 per cent of dirt, lead, and other foreign substances.....	8, 974. 66
No. 3. Difference in exchange on due date of draft and date of payment of same.....	898. 63
No. 4. Extra interest at 7 per cent owing to draft not being taken up by due date.....	514. 59
No. 5. Cables, insurance, protesting draft, and other expenses charged by Russo-Chinese Bank.....	321. 33

[Exhibit No. 8, page 12.]

	Taels.
No. 6. Two months' extra storage of cargo during the time said cargo was lying in dispute.....	233. 20
No. 7. Expenses of survey made by Samuel H. Shorrock.....	150. 00
No. 8. Overcharge on freight, petties, and insurance.....	293. 73
No. 9. A fraudulent and false charge of the said defendants for alleged bargain money, which the plaintiffs believing the said false and fraudulent representations to be true, paid the same and which the defendants have not returned.....	3, 000. 00
No. 10. Coolie hire at survey and watching cargo.....	50. 00
No. 11. Damage sustained by plaintiffs in not being able to dispose of the said cargo upon its arrival in Shanghai.....	10, 000. 00
No. 12. Amount lost by plaintiffs through the dirt, lead, and other foreign substances in copper and brass, which a customer of said plaintiffs declined to take on account of the said foreign substances and because of the fall in the price of copper and brass, at the time of this contract with said plaintiff's customer.....	1, 500. 00
No. 13. The difference between the stipulated agreement made by the defendants, to wit: "Cargo to be delivered in bags in good shipping condition and marked so as to be plainly distinguished between copper and brass," and the actual condition in which the cargo was delivered to the plaintiffs, to wit: The cargo was packed indiscriminately, the brass and copper put together instead of separately.....	2, 000. 00
	<hr/>
	28, 881. 14

The defendant admitted an overcharge of taels 900, and deposited in court \$1,195.00 (taels 900@754) on Nov. 18th and \$91.14 (taels 68.62@.7461) on Nov. 19th. The other claims of the bill of particulars are combated.

After patient hearing and consideration of the testimony and argument, the court agrees with the contention of plaintiff in specification No. 1 of the bill of particulars. It is admitted that a fraud was committed on plaintiff by defendant in that a false copy of the contract between Andrews and George and Friede was given to plaintiff, on which he was charged and paid rubles 1,060.20 over and above the true price. He also paid 2½% commission in the above overcharge, equaling rubles 26.50. He has also paid 7% interest on this amount from April 30th, 1902, to date (9 months), equaling rubles 57.05; making a total under specification 1 of rubles 1,143.75 (taels 1,030.40). Under specification 8 it appears that the freight, etc. (Ex. K) was

[Exhibit No. 8, page 13.]

tls. 535.76. It appears charged under Ex. B 2 as rubles 967.13 which at 111 equals tls. 871.29, or an overcharge of tls. 335.53 with interest at 7% from April 30th to date (taels 17.61) equals tls. 353.14.

Under Specification IX it appears that tls. 3,000 was deposited by plaintiff as bargain money under the contract with Friede. It was not so deposited by Andrews & George; but Andrews & George put in a counter claim of expenses incurred by order of Nee Chang Mow in defending the suit of Friede above referred to; of which counter-claim tls. 2,062.29 was allowed by the agreed upon accountant, making a balance due, Nee Chang Mow of tls. 937.71 and 7% interest from April 30th, 1902 (tls. 49.23) totaling tls. 986.94.

Under the specification II it appears that plaintiff has paid to defendant rubles 6,691.02@111=tls. 6,027.95, for which amount Friede is suing Andrews & George, who are in that suit acting as agents for plaintiff.

While defendant holds this sum, it is in the nature of a guaranty and must stand without any award regarding it until the outcome of the suit of Friede vs. Andrews and George is seen.

The court therefore finds for plaintiff in the sum of taels 2,370.48, with interest at 7% from Jan. 1st, 1903. Judgment is withheld for an accounting of the sum of tls. 6,027.95 until the suit of Friede vs. Andrews & George at Port Arthur is decided. Court costs to be paid by defendant.

Jan. 1, 1903.

(Sgd.) JOHN GOODNOW,
Consul General, Acting Judicially.

Assented to:

(Sgd.) ROBT. H. HUNT,
(Sgd.) HARRY DE GRAY,
Associates.

[Exhibit No. 8, page 14.]

IN THE U. S. CONSULAR COURT, *Shanghai, China*, ss:

I do hereby certify that I have compared the preceding with a certain judgment recorded in this court and do certify that the same is a correct transcript therefrom and of the whole of the said judgment.

In testimony whereof, I hereunto set my hand and affixed my official seal at the city of Shanghai, this 23rd day of October, 1911.

T. C. WHITE,
Clerk United States Consular Court.

Court fees:	
Affixing seal.....	G. \$0. 20
Certification.....	1. 00
	<hr/>
	G. 1. 20

[Exhibit No. 8, page 15.]

UNITED STATES COURT FOR CHINA,
Shanghai, Nov. 6, 1911.

Nee Chang Mow *v.* Andrews & George. In equity. Petition for writ of ne exeat and for discovery.

JUDGMENT.

The complainant to proceeding by a bill in equity. (1) He seeks enforcement of a judgment alleged to have been rendered in the American consular court at Shanghai, China, on January 8, 1903; (2) he seeks an accounting for a certain sum of money, alleged to be due from defendants to the complainant and which the consular court, it is alleged, recites as being the subject of suit between another party and

[Exhibit No. 8, page 16.]

refuses to make any award pending said; (3) he prays for writ *ne exeat republica*. After filing original bill and after filing of answer by defendants and in absence of objection from defendants, complainant was allowed to file an amended bill to which defendants have demurred. First as to amount covered by alleged judgment (Tls. 2,370.48 with interest and costs) it is not alleged that execution was ever had, or attempted to be had. If judgment was obtained as alleged, it was rendered in the American

[Exhibit No. 8, page 17.]

Consular Court, which court at that time had presumably full jurisdiction and continued to have full jurisdiction for about three years thereafter until the United States Court for China was created on June 30, 1906, at which time the Consular Court was deprived of jurisdiction in a civil cause where the amount involved exceeded five hundred gold dollars. Execution not having been had in the trial court and that court meantime having lost jurisdiction by reason of the amount involved, it probably follows that any further proceedings in

[Exhibit No. 8, page 18.]

the matter would have to be taken in this court. The action of this court would wholly depend upon the case as presented. It is fundamental that action for recovery of judgment is one at law. It is clear to the court that the plaintiff's remedy in this case is on the law side of the court involving a simple action in debt. Certainly no ground is laid in the bill which satisfies the court that the remedy at law on this judgment will be inadequate. Second, as to amount alleged to have

[Exhibit No. 8, page 19.]

been paid to defendants by the complainant, it appears not to have been embraced in the judgment. So far as the bill discloses, the amount claimed is for a certain amount of money alleged to have been paid to the defendants by the complainant. It would appear that the remedy would be in an action at law, although the allegations made in reference thereto are insufficient to admit of any specific holding on that point. The court is satisfied on the averments made in the bill that, whatever

[Exhibit No. 8, page 20.]

remedy may be appropriate for this item, whether at law or in equity, a bill in equity joining this item of claim with a judgment claim is fatally defective. Third, it follows that no case is presented upon which the court can grant a writ *ne exeat republica*.

As affecting the action of the court on this demurrer, consideration has been given to the fact that nearly nine years have been allowed by the claimant to elapse since judgment in the consular court, without execution. While it is possible that claimants' legal rights may not be

[Exhibit No. 8, page 21.]

barred by this long delay, much delay breeds staleness and tends to minimize ground upon which to appeal to the conscience of the court. The demurrer is sustained. The bill is dismissed.

[Exhibit No. 9, page 1.]

UNITED STATES COURT FOR CHINA.

CERTIFIED COPY OF ORDER OF COURT ADMITTING GEORGE F. CURTIS TO PRACTICE AS AN ATTORNEY AND COUNSELOR AT LAW.

[Exhibit No. 9, page 2.]

In the United States Court for China, at Shanghai, July, 1909.

[Copy of order of court admitting George F. Curtis to practice as an attorney and counselor at law.]

ROKKOSAN, JAPAN, *July 28, 1909.*

ORDER.

Whereas, Mr. George Franklin Curtis, a citizen of the United States, has applied for admission to the bar of the United States Court for China and has presented grounds for granting him an early examination which appeal strongly to the consideration of the court and which have induced the presiding judge to personally examine the applicant, notwithstanding the fact that court is in vacation, and has passed a satisfactory examination:

It is ordered that, upon presenting himself to the clerk of the court and taking the usual oath, he shall be duly received and enrolled as a member of the bar of this court.

RUFUS H. THAYER,
Judge of the United States Court for China.

[Exhibit No. 9, page 3.]

In the United States Court for China, at Shanghai, August, 1909.

CERTIFICATE OF COPY.

I, F. E. Hinckley, clerk of the United States Court for China, hereby certify that I have compared with the original, of record in the registry of the court, a copy of a document hereto attached under seal of court, namely, "United States Court for China. Order of court admitting George F. Curtis to practice as an attorney and counselor at law, dated July 28, 1909," and that I find the same to be a true copy and of the whole of said original.

Witness the seal of court with my hand hereunto set at Shanghai, China, August second, 1909.

[SEAL.]

F. E. HINCKLEY,
Clerk of Court.

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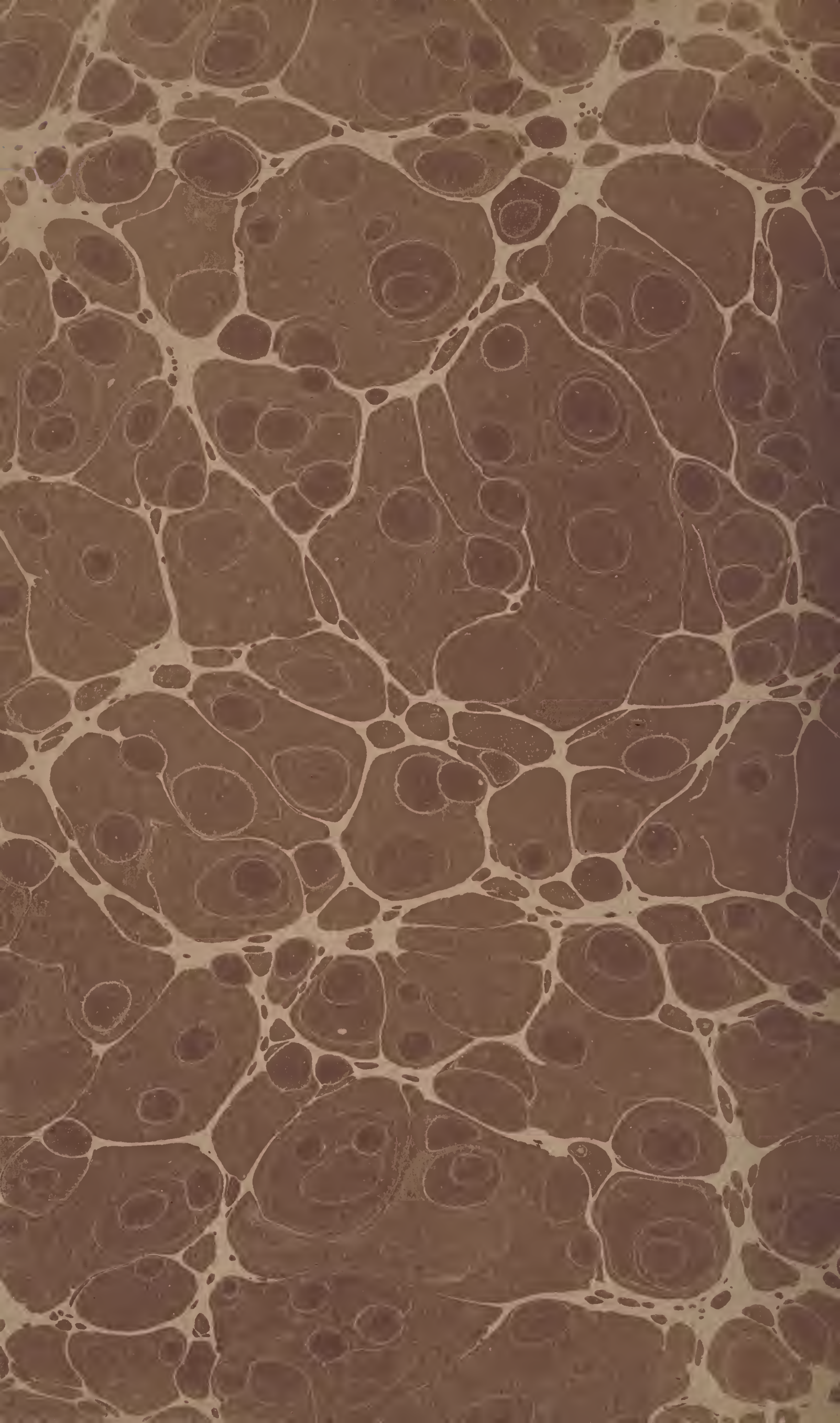
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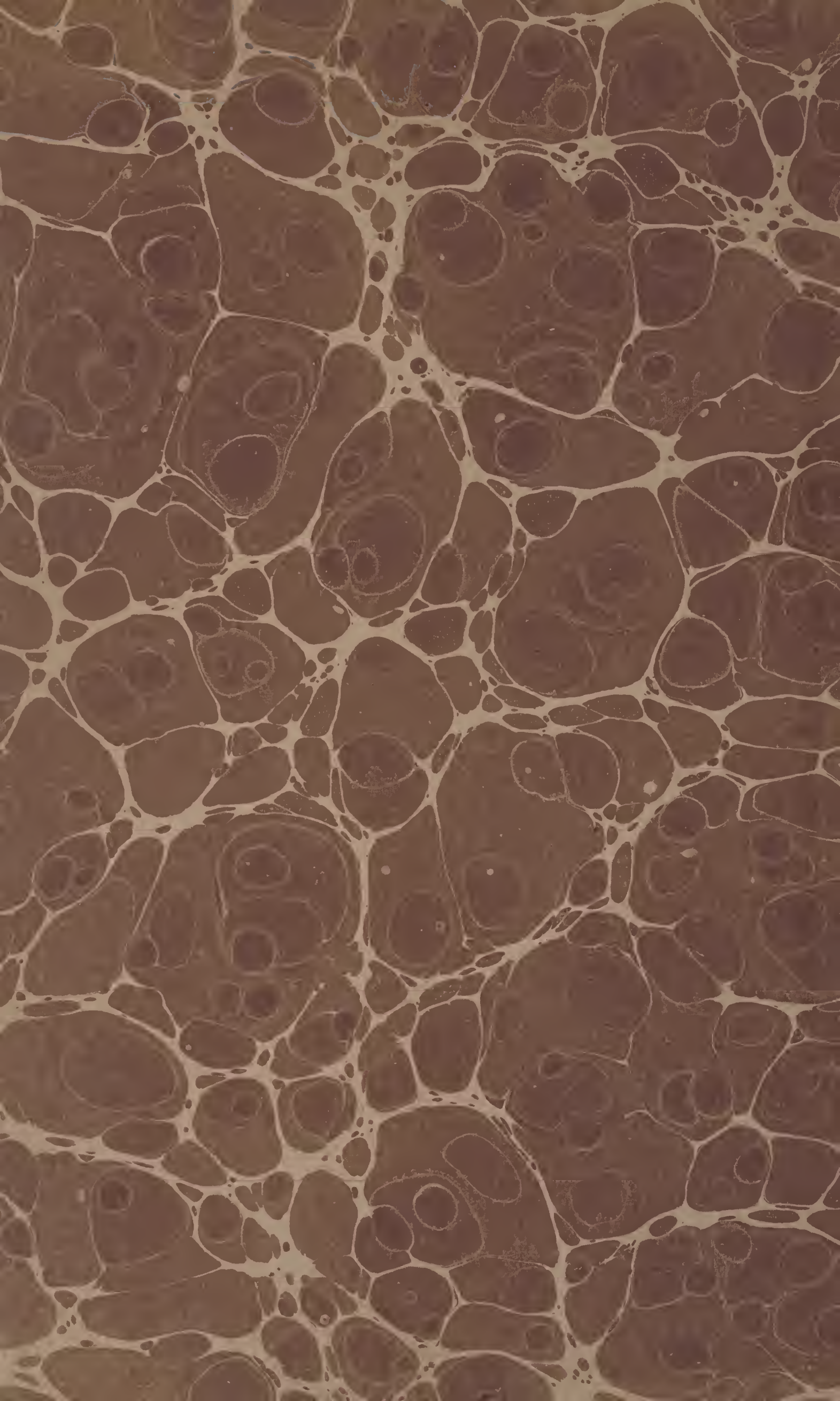
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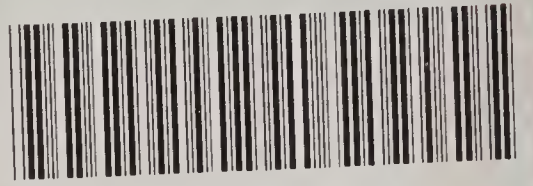
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